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THE UNITED STATES AND PORTO RICO

THE UNITED STATES AND PORTO RICO

WITH SPECIAL REFERENCE TO THE PROBLEMS ARISING OUT OF OUR CONTACT WITH THE SPANISH-AMERICAN CIVILIZATION

BY

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To

MY FATHER AND TO MY UNCLE

THIS VOLUME IS AFFECTIONATELY

INSCRIBED

PREFACE

THE main purpose of this work is to discuss the problems arising out of our contact with the Spanish-American civilization. The questions with which we have been compelled to deal in Porto Rico are bound to present themselves on a larger scale in the years to come, and the problems involved are of such a technical character that something more than common-sense will be required to deal with them. We must acquaint ourselves with the situation through a careful analysis of the conditions under which Spanish-American civilization has developed. Not until then shall we be prepared to meet the complex questions which our relations with these countries present.

I desire to record my obligations to my dear friends; the Hon. Wm. H. Hunt, Governor of Porto Rico, Dr. Samuel McCune Lindsay, Commissioner of Education, Professor Joseph French Johnson and Professor Henry R. Seager, for the careful reading of the manuscript, and to Mrs. Morris Jastrow, Jr., and Professor John L. Stewart for the most trying of all tasks—the reading of the proof sheets.

UNIVERSITY OF PENNSYLVANIA,
February 1, 1904.

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INTRODUCTION

: establishment of civil rule in Porto Rico and in
ilippines possesses a significance far deeper than
mediate legislative and administrative problems
ed. The acquisition of these islands is only one
of a larger movement which is profoundly influ-
our national life, and which will ultimately
the operation, if not the form, of our institutions.
ıtever may be its ultimate effects, it is clear that
tension of our influence, both commercial and
al, was inevitable; inevitable in the sense that
ovement was inextricably bound up with our
ı as a nation. Our entry into the West Indies
either fortuitous nor unexpected. Anyone who
ven the slightest attention to the commercial and
rial development of the United States during
ıt twenty years and to whom the Monroe Doctrine
, something more than a mere arbitrary assump-
f power, must be impressed with the fact that the
Indies are natural economic dependencies of the

United States. We are their only profitable ma and if this be closed it involves their retrogression decline.

That our first possession in the West Indies sh be a country whose traditions are distinctively Sp and whose people have been subjected to the tra peculiar to Spanish colonies was the unforeseeabl ment in the situation. It has brought us face to with the most difficult question that the archip presents. Had our entry into the West Indian situ been through one of the English, or even one c Danish islands, the problem would have been far pler. We should then have had to deal with a p who spoke our own language and who had grad been trained to some participation in public life should have found a legal system based upon the mon law and one therefore not radically differe spirit, from our own. Instead of this, the sover of the United States was extended over a people s ing a different language, whose traditions were f moved from our own and who have been denie invigorating influence of active participation i affairs of their country.

Although we were compelled to approach the Indian situation from its most difficult side, the

confidence so characteristic of the American people has never for a moment faltered in the conviction that we would be able to solve the problem and solve it successfully. It is a significant fact that in the public discussion which the government of the new dependencies has aroused, little attention has been given to the colonial experience of other countries. As a people we take no interest in what other nations have done, although many of their problems are similar to our own. There is a deep-rooted conviction that however successful they may have been, we shall be able to evolve something better. This faith in our own power is a source of great strength. It facilitates that quick and ready action which is so necessary in meeting new situations, and leads us to attempt the adaptation of our own institutions rather than to borrow from those of other countries. But this attitude carries with it certain dangers. We are apt to forget that the American idea of individual liberty and local self-government is an inheritance and not a spontaneous growth. The mere fact of the extension of American sovereignty cannot, in and of itself, develop the qualities requisite for the successful working of free institutions, and any attempt to build on such a principle is certain to bring disaster.

It will be the purpose of the following chapters to

analyze the social, political, and legal problems arising out of our contact with the Spanish-American civilization in Porto Rico. The questions presented are in many respects unique, and their successful solution will make demand on the highest traits of national character—unselfish devotion combined with firmness, forbearance, and patience.

THE UNITED STATES AND PORTO RICO

CHAPTER I

THE EXTENSION OF AMERICAN INFLUENCE IN THE WEST INDIES

To the people of the United States the West Indies are hardly more than a name. Our commercial relations with the islands have been relatively unimportant, and we have remained indifferent to the problems of government which they have presented. In fact, if the question were asked, "To whom do the West Indies belong?" it would be difficult to find anyone who could give off-hand a correct answer. In recent years, it is true, the fortunes of Cuba have aroused the sympathies of the American people, but as to the condition and nationality of the other islands they have shown little interest or concern. Nor has the slightest attention been given to the industrial revolution through which the West Indies have passed, and which has left its

mark on their social and political status. In fact since the disappearance of the temptation to acquire additional territory in the Caribbean for the purpose of extending slavery, these islands have not been a factor in the public policy of the United States. To the historian, however, they have been of continuous interest. In the West Indies have centred the struggles of the European powers for a foothold in America, the great naval conflicts which these struggles engendered, the daring exploits of the buccaneers, and the cruelties and barbarities of the slave trade. Tested by modern standards the record is unenviable. Complete absence of good faith, treachery toward the native population, inhuman treatment of the conquered peoples, and a total disregard of personal and property rights characterize the policy of the European Powers during the sixteenth and seventeenth centuries. And yet, with it all, there is an irresistible attraction in the story of these islands, due largely to their close relation to the rise of the great Continental Powers and to the extraordinary character of the leading figures in the conflict for the supremacy of the Spanish Main.

Prized for their resources, and even more because of their strategic position, no sacrifice seemed too great in order to secure possession of them. When we re-

member that the control of the West Indies meant the command of a highway which led to new sources of fabulous wealth, we can readily understand the willingness to sacrifice untold lives, to risk national honor and to impose crushing burdens upon the national treasury in order to secure a few square miles of territory. As Froude eloquently puts it: "Here Drake and Hawkins intercepted the golden stream which flowed from Panama into the exchequer at Madrid and furnished Philip with the means to carry on his war with the Reformation. The Pope had claimed to be lord of the new world as well as of the old, and had declared that Spaniards, and only Spaniards, should own territory or carry on trade within the tropics. The seamen of England took up the challenge and replied with cannon-shot. It was not the Crown, it was not the Government, which fought that battle: it was the people of England who fought it with their own hands and their own resources. Adventurers, buccaneers, corsairs, privateers, call them by what name we will, stand as extraordinary but characteristic figures on the stage of history, disowned or acknowledged by their sovereign as suited diplomatic convenience. The outlawed pirate of one year was promoted the next to be a governor and his country's representative. In those

waters the men were formed and trained who drov Armada through the Channel into wreck and ruin. those waters, in the centuries which followed, Fr and England fought for the ocean empire, and Eng won it—won it on the day when her own politic hearts had failed them, and all powers of the world combined to humiliate her."

When we turn from this picture so full of con rivalry, and enthusiasm, and encircled with the ha romance, to examine the more recent history of the Indies, the contrast is startling and in some respect pressing. The prized islands of the seventeenth tury have become the burden of the twentieth, the and-death struggle of the eighteenth century has g way to indifference and apathy. They have dra themselves wearily in the wake of the general adv of the century. In fact, the progress of our we civilization seems to have worked to their disadvan By a curious combination of circumstances, the Indies have profited by the suffering of Europe have been crushed by European prosperity. They registered with great accuracy the shifting of indus and commercial relations and every change in the tion of America to Europe has found its reflex in status of the islands.

To ascertain the cause of this decline, one must keep in mind the industrial policy of the great European Powers, and particularly of England, during the nineteenth century. The aim of the eighteenth century was to protect the producer to the neglect of the consumer. With the rise of the middle and working classes to a dominant position, the interests of the consumer were forced upon the governments of Europe and became the chief object of their care. The contrast in English commercial policy is particularly marked. During the reign of George the Second the law of England attempted to give to the West Indies a monopoly of the English sugar market, irrespective of price; during the reign of Victoria the Government labored consistently to secure sugar from the cheapest sugar-producing centres. On the continent of Europe, an industrial movement, likewise intended to protect the producer, has worked injury to the West Indies. The attempt to encourage the production of beet sugar has led both Germany and France into a system of export bounties, which enables the Continental producer to place sugar on the English market at a price which makes the cultivation of cane sugar unremunerative in the less favorably situated islands such as Dominica and St. Croix, and but slightly remunerative in the more

fertile islands such as the Barbadoes and Jamaica. English and Continental industrial policy weighed heavily on the West Indies; in fact, to such a degree as to block further progress. The labor problem, which arose immediately after the abolition of slavery, tended to aggravate the situation of the West Indian planter. The discouragement which resulted led to stagnation in methods of production and makes the recent history of the English West Indies a story of gradual but steady decline.

It is true that our first acquisition in the archipelago occupied an exceptional commercial position. Until the hurricane of 1899 Porto Rico was the leading coffee-producing island of the West Indies, and it is likely that within a few years coffee rather than sugar will again be the dominant crop. Owing to the great demand for Porto Rican coffee in France, Italy, and Austria, the prosperity of the island was but slightly affected by the economic revolution which has ruined the English West Indies. Porto Rico carried without difficulty an annual budget of two and one-half millions of dollars gold, or four millions Spanish silver. It stands, therefore, in marked contrast to the geographical group of which it forms a part, and its history is in no sense typical of the archipelago.

Varied as have been the economic fortunes of the English, French, and Danish islands, they are tame and uninteresting when compared with their checkered political history. For more than a century these islands were the foot-ball of Continental politics. Little attempt was made at colonization. The climate called for a people who could endure the tropical heat, and the proximity to the western shore of Africa furnished this population. The enslavement of the negro reacted upon the industry of the islands, and committed them—hopelessly one is almost tempted to say—to the growth of the sugar-cane. With slavery their political organization was no longer a matter of choice. Complete subjection to the mother country and a total disregard of the personal rights of the subject populations characterized the West Indian policy of the seventeenth and eighteenth centuries. Emancipation did not in any way relieve the situation. In fact, it tended in some respects to aggravate the political difficulties. The overwhelming proportion of negroes and mixed races inspired the white population with a fear of uprisings which at times reached the point of overpowering and unreasoning terror, and which, for two generations, was an insuperable obstacle to real progress.

Strange as it may seem, the political emancipation

of the West Indies begins with their industrial decline. Commercial stagnation bred discontent, and discontent found expression in political agitation and disturbance. The English Liberals of the sixties failed to see the economic basis for this political movement and construed it—in fact, welcomed it—as the awakening of political consciousness, long hoped for, it is true, but coming when least expected. To them it was an unmistakable indication that the islands were ripe for local self-government. This enthusiastic but unfortunately illusory view appealed, for reasons less generous, to merchants and land-holders who saw that the West Indies would soon become a burden to the mother country. Although convinced that independence meant a gradual lapse into barbarism, they were willing to allow posterity to take its chances, provided England might be relieved of a troublesome political situation. In Cuba the same economic pressure inaugurated the series of revolutions which finally led to our conflict with Spain.

The picture is thus complete. The islands that were once so highly prized have lost their hold not only on the imagination of Europe, but also on its material interests. Nothing could be more instructive than the long series of commission reports—English, French,

and Spanish—telling the same tale and pointing to the same conclusion, to wit: that under the existing commercial policy of Europe, the only salvation for the islands is the opening of the American market. A brief period of reciprocity gave to the planters a glimpse of the promised land and aroused the hope that a solution had at last been found, but the refusal of the United States to renew these treaties placed the islands again in the unfortunate situation from which they seemed to be emerging. Unless, therefore, the epoch in which we are living is to witness a new shifting of commercial relations, the outlook for the West Indies is hopeless. As a student of the West Indian situation recently said: "The archipelago must be absorbed into the United States or lapse into barbarism."[1]

Fortunately for the islands the United States is passing through a series of industrial changes which seem destined to place this group of islands in a position not unlike that which it occupied in the seventeenth century, or at least in one approaching that in importance. The development of our manufactures has led us to look outward for new markets and has directed attention to South America and the Far East. Through this quest for new markets, the West Indies have acquired

[1] Brooks Adams, American Commercial Supremacy.

a new importance, mainly because of their strate position, the true significance of which will be brou home to us with the opening of the Isthmian Can Combined with this, and forming the most importa political factor in the situation, stands the Monr Doctrine, which will permit no other nation to acqui a foothold in these waters, and thus forbids any chang of sovereignty in the Caribbean other than transfe to the United States. Sooner or later we must be pre pared to assume the responsibility which this inter pretation involves. In the long run it will be extremely difficult for us to defend a position which lays down the rule to every European Power, "We forbid you to buy and we refuse to purchase."

Thus a combination of economic and political forces, which seems almost irresistible, is driving the West Indies into the arms of the United States. While, therefore, our immediate commercial interests may dictate that we acquire and maintain a dominant position in the Caribbean and may lead us to the gradual absorption of the islands, we must not shut our eyes to the political responsibilities which this policy involves. England has tried almost every form of government in the West Indies and has failed to achieve marked success with any. For each group there is a different lesson to be

earned, a different service to be performed. In the English islands, the United States would have to attempt the government of a predominantly negro population, largely through its own representatives. In the French group, we should be compelled to harmonize the highly centralized colonial system of France with our own ideas of local autonomy. In the Spanish islands, the problem is to take a population which for centuries has been far removed from public life, whose traditions and training are totally different from our own, and gradually adjust their ideas to American standards. To accomplish what England, France, Spain, Denmark, and Holland have striven for in vain seems no light undertaking. The task is one that might well make a nation with less buoyancy and self-confidence pause and hesitate. It is true that we enter upon the work with an advantage which no other nation possesses; namely, the possibility of giving to these islands a degree of prosperity which they have not enjoyed since the middle of the last century. Our unlimited capacity in the consumption of sugar, coffee, and other tropical products assures a market incomparably superior to any which they now possess.

But even these economic advantages will not guarantee an easy and ready solution of the problem of govern-

ment. To meet this phase of the situation will require an adaptation of our political ideas and standards which is certain to put us to a severe test. The ready ease with which the American people assume responsibilities of the gravest nature, the unlimited self-confidence in their ability to solve the most difficult political problems are, in the main, elements of strength in dealing with such a situation. But this advantage involves dangers which we must not ignore.

Our unbounded faith in the benefits of American rule and in the blessings of American institutions has obscured the otherwise obvious fact that it requires time and patience to arouse the same enthusiasm in a people accustomed to an essentially different system of law and political organization. It is characteristic of our self-assurance that in dealing with our new possessions, we have remained indifferent to European experience and European example. No shadow of doubt has disturbed the conviction of our ability to adapt our institutions to the new conditions, and we should strongly resent any imputation to the contrary. Is it not true, we ask, that the elasticity of mind and the tolerance of spirit of the American people have been the admiration of the nations of Europe? The readiness with which we have absorbed foreigners coming to our

shores, without doing violence to any of their accepted traditions, has been pointed out—and justly so—as one of the greatest achievements of modern times. No matter how far removed from our type of civilization these peoples may be, a few years suffice to bring them to our mode of life, and in most cases to our mode of thought. The Chinese have been the only notable exception to this rule.

But our contact with foreign peoples in the West Indies is of an entirely different character. We are in a sense strangers in their midst, and owing to climatic conditions must always remain in the minority. They have and will retain a mode of life and a standard of activity which is quite different from our own and which we cannot hope radically to change. While the organizing power in both government and industry must come from the north, the detailed execution must depend upon native capacity and native labor. The question of our attitude toward the native population of these islands becomes, therefore, a matter of supreme importance.

On this point our contact with the Spanish-American civilization in Porto Rico is of far-reaching significance. In California and New Mexico, it is true, we were brought into close relation with Spanish customs and in-

stitutions, but—especially in the case of California—the country proved so attractive to our own people that in a short time the Spanish element found itself in the minority. In such circumstances it is not surprising that the transformation was rapid and complete. Native institutions yielded naturally to the new order of things. The comparative ease with which these problems were solved, together with the ready assimilation of the masses of foreigners constantly crowding to our shores, has led us to the belief that we are a cosmopolitan people. The experience of the last three years in Porto Rico, Cuba, and the Philippines raises the question whether we have not over-estimated our spirit of tolerance and the elasticity of our ideas.

In Porto Rico we have come into the midst of a people foreign to us in manner of thought and distinctly European in their institutional life. For nearly four centuries the Roman law, with its essentially different theory of the family, has governed domestic relations; a highly centralized administrative system has given the tone to civic life, and the Roman Catholic Church, supported by the State and identified with it, has strengthened the principle of authority which pervades both domestic and public relations. Whatever our opinion as to the desirability of this social structure, it is evi-

ıt that it cannot be changed at a stroke without iously endangering the entire social fabric of the ınd. But for the conservative policy of the civil vernment established under the Foraker Act we ght have aroused a distrust of American institutions ıt would have delayed, for a generation at least, : Americanization of the island. To the mass of nericans resident in the island—and this is particu- ly true of the lawyers—the entire system of law and vernment, of domestic and public institutions, was d simply because it was different from our own. 'erything that did not conform to our system was not ly un-American but anti-American. The lawyer m Massachusetts wanted the Massachusetts system, : lawyer from South Carolina the South Carolina tem, and so on. The fact that one of the prosperous ıtes of the Union is living under a civil law in many pects similar to the Spanish system was given no ight. The system was condemned because it was ferent from our own. The only way to make Amer- .ns of the Porto Ricans, it was argued, was to give :m, without delay, the system of law of one of our ıtes. "This is the way we do it in the States" was ɜarded as an argument sufficient to bring conviction the mind of every native.

On the other hand, when it became a question gradually introducing our American standards of political liberty and local self-government, an entirely different situation was presented. Almost every step taken to give the native population control over its own affairs met with the disapproval of the same element that had condemned all native institutions. This seeming contradiction is traceable to the same feeling of superiority which inspired contempt for the local law. In politics as well as in business life, we are prepared to sacrifice everything else to efficiency. Owing to the inexperience of the native population, every concession to the principle of local self-government involves the possibility of a temporary reduction of administrative vigor. Here again the insular authorities showed themselves in advance of American opinion in the island. The responsible heads of the Government saw clearly that we were in Porto Rico not merely to administer a dependency, but to bring the population to a higher level of political life and to a higher standard of political efficiency. The Government was not unmindful of the fact that civic progress would be more permanent, even if less rapid, if built upon native co-operation and the development of the feeling of individual responsibility.

It would take us too far afield to discuss in the present

ion the manifold problems involved in the
ı of local self-government. So much has been
ł so little has been really learned of the mental
ıral qualities which enable a people to assume
ponsibility, that we must await the results of a
experience in dealing with less advanced
before a definite answer can be given. The
ınt and important fact which our contact with
nish-American civilization in the West Indies
es, is the necessity of a greater elasticity of
broader sympathy, and a readiness, or at least
gness, to understand the point of view of a peo-
ıse training, traditions, and system of law are
lly different from our own. Without these
ı we shall never be able satisfactorily to solve
ıcult problems of government which the exten-
lominion over new peoples presents. That the
involves serious dangers no one will deny. It
d us to a barren cosmopolitanism, which is so
e first symptom of disintegration and decay.
are rapidly approaching, if we have not already
a point at which we cannot shrink from taking
because of the dangers involved. Everything
to the necessity of closer relations with the
ıs of South America. The Monroe Doctrine

carries with it obligations as well as rights. The feeling of distrust toward the United States which was so evident during the recent war must be made to disappear through the assurance that the hegemony of the United States on the American continent does not involve the destruction of the domestic institutions of the Southern Republics.

If, in our contact with foreign civilizations in the West Indies, we show a harsh, unbending spirit, this feeling of distrust will develop into an abiding hatred, which will block effectually the fulfilment of our mission on the American continent. Although the problem of government in these islands does not present great territorial importance, it involves all those political lessons which we must learn in order to meet our political duties and obligations as the leading nation of the Western Hemisphere. The real significance of the extension of American dominion in the West Indies lies not so much in the fact of territorial aggrandizement as in the adaptation of our political ideas and standards which this expansion involves. It is this new necessity for adaptation that marks the real turning-point in our history. We are being put to a test to which France failed to respond and which England and Germany have met with but partial success. Nothing we

can do, save an ignominious retreat, can avoid the issue.

The situation adds a new responsibility to the ever-increasing demands upon American statesmanship and upon American citizenship; an ability to appreciate the value of institutions which, while different from our own, fulfil the same ends of justice; a conservatism born of this comprehension, and with it all, a firm determination to bring the new peoples with whom we may be brought into close and intimate contact, by means of the slow process of education, to a free and willing acceptance of all that is best in our system of law and government.

CHAPTER II

THE POLITICAL AND LEGAL ASPECTS OF CHANGE OF SOVEREIGNTY

IT is an interesting coincidence that both the treaties that mark turning-points in the domestic and foreign policy of the United States should have been negotiated in the French capital and should both be known as Treaties of Paris. Although the territory acquired by the treaty of 1899 neither compares in area nor in value with that added in 1803, the probable influence of the later treaty on the institutions and public policy of the country entitles it to a position of almost equal significance.

The ratification of each treaty was followed by protracted constitutional discussions, first as to the power of the United States Government to acquire territory, and then as to the limitations on congressional action in dealing with the inhabitants. The controversies of 1803 were set at rest only by the decision of the Supreme Court. The wide differences of opinion

evoked by the treatment of the territory acquired by the treaty of 1899 have not been reconciled by the opinions of the Supreme Court in the Insular cases. This is due, in part, to the unprecedented division of opinion amongst the justices, but mainly to the failure of the decisions to answer clearly and definitely some of the most important constitutional questions involved in the controversy.

American Insurance Co. *vs.* Canter,[1] decided in 1828, set at rest all doubt as to the constitutional power of the United States to acquire territory—a power which rests upon no specific constitutional provision, but is inherent in the existence of the United States as a sovereign nation. The conditions under which such territory may be held, the applicability of the constitutional requirements and limitations, and the power of Congress in dealing with the inhabitants, are all questions to which the Supreme Court had given no definite answer, owing to the fact that the specific points at issue in the recent cases had never before been presented for adjudication. It is true that in a number of opinions incidental questions were adjudicated which furnished a background of precedent, but even these precedents are valuable as an indication of the attitude

[1] 1 Peters: 542.

of the court rather than as final expressions of judicial opinion on the questions involved.

In addition to these constitutional questions, the ratification of the Treaty of Paris brought up a number of legal questions—international and domestic—presenting peculiar difficulties. The overthrow of the Spanish rule by the invading army of the United States placed Porto Rico in possession of the military authorities. In the exercise of the right accorded to every belligerent by international law, a provisional government was established for the purpose of maintaining social order and securing respect for person and property.

In administering the civil affairs of a country as an obligation incident to belligerent occupation, the authority of the military commanders is free from the constitutional limitations on executive, legislative, and judicial power. During this period the territory is not regarded as part of the United States within the meaning of the constitution. In Fleming *vs.* Page,[1] decided in 1850, the Supreme Court of the United States, speaking of the status of Tampico during its belligerent occupation by United States troops, said: "The boundaries of the United States as they existed when war was declared

[1] 9 Howard: 616.

gainst Mexico were not extended by the conquest; nor ›uld they be regulated by the varying incidents of war ıd be enlarged or diminished as the armies on either de advanced or retreated. They remained unchanged ıd every place which was out of the limits of the United tates as previously established by the political au-ıorities of the Government was still foreign."

As a matter of public policy, military governments hus established have usually allowed the domestic institutions of the occupied or conquered country to remain untouched, especially when not in conflict with the institutions and political standards of the conquering country. In fact, the "Instructions for the Government of Armies of the United States in the Field"[1] provide that "all civil and penal law shall continue to take its usual course in the enemy's places and territories under martial law, unless interrupted or stopped by order of the occupying military power; but all the functions of the hostile government—legislative, executive or administrative—whether of a general, provincial, or local character, cease under martial law, or continue only with the sanction, or if deemed necessary, the participation of the occupier or invader."

The moment the invaded territory ceases to be the

[1] General Order 100, A. G. O. 1863.

theatre of military operations the authority of the m itary government becomes subject to important li tations. The complete dependence of individual rig on the will of the military commander ceases and acts become subject to certain rules of law which courts have not hesitated to enforce. Of these, most important is the rule of "immediate exigency" "necessity." When, during the Reconstruction Peri the military governors attempted to set aside judi decrees, the Supreme Court held that "it is an unbe ing rule of law, that the exercise of military po where the rights of the citizens are concerned s never be pushed beyond what the exigency require

The ratification of the Treaty of Paris on A 11, 1899, and the formal transfer of sovereignty not affect the existence of the military governm although it served still further to limit its powers. evident that the change of dominion alone contribu nothing toward the establishment of a new gov ment to replace the old, and that therefore the s principle of overruling necessity justified the existe of military government until replaced by some for civil rule established by Congress. On this point t has been complete harmony of practice and opinio

[1] Raymond *vs.* Thomas. 91 U. S. 712.

the executive, legislative, and judicial branches of the Government. Military government was maintained over New Mexico and California for an extended period after the treaty of peace with Mexico. President Polk in his message of December 5, 1848, justified this policy in the following terms: "The only government which remained was that established by the military authority during the war. Regarding this to be a *de facto* government, and that by the personal consent of the inhabitants it might be continued temporarily, they (*i.e.*, the inhabitants of the territory) were advised to conform and submit to it for the short intervening period before Congress would again assemble and could legislate upon the subject." The first clear judicial adjudication on this point was made by the Supreme Court of the United States in Cross *vs.* Harrison.[1] The question at issue was the validity of certain customs duties collected on goods coming into California, and involved, incidentally, the authority of the military governor to impose such duties after the ratification of the treaty of peace. Referring to the continued existence of the military government after the exchange of ratifications the court said: "The President might have dissolved it by withdrawing the army and navy officers who

[1] 16 Howard: 164. Decided in 1853.

administered it, but he did not do so. Congress could have put an end to it, but that was not done. The right inference from the inaction of both is that it was meant to be continued until it had been legislatively changed. No presumption of a contrary intention can be made. Whatever may have been the causes of delay, it must be presumed that the delay was consistent with the true policy of the Government; and the more so, as it was continued until the people of the territory met in convention to form a State government, which was subsequently recognized by Congress under its power to admit new States into the Union."

While its existence may thus be continued, the status of the military government undergoes some change through the ratification of the treaty of peace. Prior to this time a state of war exists constructively, and the military government is merely a substitute for the displaced authorities. After the ratification of the treaty the military government *represents the new sovereignty*[1] and its action can no longer rest on military exigency. It becomes a provisional civil authority, intrusted with

[1] This distinction has been clearly set forth in the valuable compilation of the reports of the law officer of the War Department, Charles E. Magoon, Esq. "The Law of Civil Government under Military Occupation," Government Printing Office, 1902.

task of maintaining order, protecting the public th, and promoting the administration of the internal rs of the country. The substitution of the civil for nilitary code is no longer a matter of choice. The ›n of the military authorities must conform to the lamental principles of free government and respect ndividual rights; the summary methods of martial are no longer permissible. In *ex parte Milligan*[1] listinction between the two kinds of military juris- on was clearly pointed out. The case involved the lity of a conviction by a military court held in the ɜ of Indiana during the Civil War. "If, in foreign sion or civil war, the courts are actually closed and impossible to administer criminal justice according w, then, on the theatre of active military operations, ɾe war really prevails there is a necessity to furnish bstitute for the civil authority thus overthrown to ɜrve the safety of the army and society, and as no ɜr is left but the military, it is allowed to govern ıartial rule until the laws can have their free course. ıecessity creates the rule, so it limits its duration; if this government is continued after the courts ɾeinstated, it is a gross usurpation of power. Martial can never exist where the courts are open and in

[1] 4 Wallace: 2. Decided in 1866.

the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war."

In one of the recent Insular cases—Dooley *vs.* United States [1]—the Supreme Court laid down a principle which places a further limitation on the power of the military authority immediately upon the ratification of the treaty of peace. Commenting on the customs dues imposed on articles coming into Porto Rico from the United States after April 11, 1899, the court says: "The spirit as well as the letter of the tariff laws admits of duties being levied by a military commander only upon importations from foreign countries; and while his power is necessarily despotic, this must be understood *rather in an administrative than in a legislative sense.* While in legislating for a conquered country he may disregard the laws of that country, he is not wholly above the laws of his own. . . . His power to administer would be absolute, but his power to legislate would not be without certain restrictions—in other words, they would not extend beyond the necessities of the case." While the expressions used by the court are somewhat vague, they were undoubtedly intended to convey the meaning that the power of the military

[1] 182 U. S. Decided in 1902.

commander is unlimited in prescribing administrative rules to meet immediate exigencies or in adapting native institutions to American standards, but in the determination of the public policy of the territory under military rule, no step contrary to the general legislative policy of the United States can be taken.

Before leaving this phase of the subject it may be well to point out the peculiar situation in the Philippine Islands due to the fact that, coincident with the change of sovereignty, the United States Government had to deal with an insurrectionary movement which threatened to postpone for an indefinite period the introduction of civil rule. The continuance of the armed conflict, furthermore, prevented the treaty of peace from having its full effect on the personal rights and immunities of the inhabitants. But the fact that certain districts not only welcomed American rule, but were co-operating with the authorities in improving conditions in the islands, made the Government feel inclined to extend to such districts the full benefits of civil rule. To effect this purpose without seriously interfering with the authority of the military officers in the disturbed provinces required the formulation of a new theory of military rule, or at least a new series of distinctions as to the elements which compose it.

The Secretary of War proved himself fully equal to the task and in his effort was seconded by Congress and the President.

The view taken by the Secretary of War was that the military power vested in the President as Commander-in-Chief of the military and naval forces of the United States embraces executive, legislative, and judicial functions. Not only is a separation of these functions possible, but each may be exercised by a different group of officials. It is also a recognized principle that this military power of the President may be exercised through civil agents as well as by military officers. As stated by the Secretary of War in his report for 1901: "The military power, when exercised in a territory under military occupation includes executive, judicial, and legislative authority. It not infrequently happens that in a single order of a military commander can be found the exercise of all three of these different powers—the exercise of the legislative power by provisions prescribing a rule of action, of judicial power by determinations of right, and of executive power by the enforcement of the rules prescribed and the rights determined."

This division of authority paved the way for the appointment of the Philippine Commission, which was

vested with "that part of the military power of the President in the Philippines which is legislative in its character."[1] The executive authority in civil affairs was retained in the hands of the military governor in order to assure that ready and prompt action which the exceptional situation demanded. Judicial power was vested in such courts as the Commission, in the exercise of its legislative power, might create. Although nominally exercising legislative powers, the Commission enjoyed important executive functions. Thus, under the instructions issued by the President, August 7th, 1900,[2] the Commission was given power "to appoint to office such officers under the judicial, educational and civil-service systems and in the municipal and departmental governments as shall be provided for."

It was felt by the administration that the injection of the civil element into the military government would soften the rigors of the latter and would tend to bring the administration of the affairs of the islands into closer harmony with American standards of liberty. While this end was undoubtedly attained, the peculiar division of power gave rise to friction between the Com-

[1] Report Secretary of War [illegible]

[2] Report of Secretary of War [illegible]

mission and the military authorities which threatened materially to reduce the usefulness of the former. In order to pave the way for the complete establishment of civil government, the Spooner amendment to the army appropriation bill was passed (March 2, 1901), which provides that "all military, civil, and judicial powers necessary to govern the Philippine Islands . . . shall, until otherwise provided by Congress, be vested in such person and persons and shall be exercised in such manner as the President of the United States shall direct for the establishment of civil government and for maintaining and protecting the inhabitants of said islands in the free enjoyment of their liberty, property, and religion." This amendment made it possible for the President to make such adjustments between the civil and military authorities as the exigencies of the situation required. In the districts completely pacified, the civil authority was made supreme; wherever disturbances were still threatened the military government remained in undisturbed control. The final step in the establishment of civil government was made by the Philippine Civil Government Act of July 1, 1902, the consideration of which does not come within the scope of the present chapter. Thus, owing to the insurrectionary movement, the

ratification of the treaty of peace did not have quite the same legal effects in the Philippines as in Porto Rico. In the former, the unrestricted authority of the military commander was continued for a much longer period.

It remains now to consider the effect of the treaty of Paris on the laws and institutions of the ceded territory and on the political rights and civil status of its inhabitants. The clauses ceding Porto Rico and the Philippines transferred to the United States complete political power over the islands together with all the property and interests possessed therein by Spain.[1] In the course of the negotiations at Paris, the Spanish Commissioners insisted that the United States assume the indebtedness contracted by Spain in the interest of the ceded territory. To this the American representatives refused to accede. Under the rules of international law such obligation does not pass unless specifically provided for in the treaty of cession. The situation with reference to the indebtedness of municipalities and other local subdivisions is somewhat different. They are construed as of a quasi-private nature and remain unaffected by the change of sov-

1 Cf. Josephs *vs.* U. S. Court of Claims, 1865. I. Court of Claims, 197.

ereignty. In fact, it becomes the duty of the new sovereign to hold the local governments to a strict observance of their contractual obligations.

Ordinarily the effects of a transfer of territory upon local laws and upon the political and civil rights of the inhabitants are dependent upon two circumstances: first, the general principles of international law, and secondly, the specific provisions of the treaty of cession. Under our system of government a third factor must be added: viz., the provisions of the Constitution. It is an acknowledged principle of law that the change of sovereignty does not affect those portions of the local law that regulate the personal and property relations of the inhabitants *inter se*. All laws of a political or administrative character, however, which are not in harmony with the institutions of the new sovereignty are abrogated. They lose their force and effect by the fact of transfer and require no positive action on the part of the new government. The theory upon which this principle rests is that sudden changes in the private law would work great injustice to innocent parties and would tend to complicate the problem of government by arousing the antagonism of the inhabitants of the ceded territory. On the other hand, the new sovereign cannot permit the continued exist-

ence of institutions which are hopelessly at variance with the genius and character of its political system. To do this requires affirmative action indicating an evident intent to preserve the political institutions of the displaced sovereignty.

The rules of law governing the question were clearly presented in the Chicago, R. I. & P. R'y Co. *vs.* McGlinn.[1] "It is a general rule of public law, recognized and acted upon by the United States, that whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another, the municipal laws of the country, that is, laws which are intended for the protection of private rights, continue in force until abrogated or changed by the new government or sovereign. By the cession, public property passes from one government to the other, but private property remains as before, and with it those municipal laws which are designed to secure its peaceful use and enjoyment. As a matter of course, all laws, ordinances, and regulations in conflict with the political character, institutions, and constitution of the new government are at once displaced. Thus, upon a cession of political jurisdiction and legislative power—and the one is involved in the

[1] 114 U. S. 542, 546. Decided in 1884.

other—to the United States, the laws of the country respecting the establishment of a religion, or abridging the freedom of the press, or authorizing cruel and unusual punishments, and the like, would at once cease to be of obligatory force without any declaration to that effect; and the laws of the country on other subjects would necessarily be superseded by the existing laws of the new government upon the same matters."

While the general principle involved is perfectly clear, its application, at times, is extremely difficult. The Supreme Court of Porto Rico was recently called upon to determine whether the Spanish Press Law of November 11, 1886, in force in Porto Rico was abrogated by reason of the change of sovereignty. The court (per Justice McLeary) held that the first amendment to the Constitution prohibiting Congress from making any law abridging the freedom of the press was in force in Porto Rico. In deciding the point at issue it was hardly necessary for the court to take this advanced position. All the requirements of the situation would have been met if the principle laid down in Chicago, Rock Island and Pacific Railroad Co. *vs.* McGlinn had been applied: viz., that the law in question was in direct antagonism with one of the fundamental principles of American liberty—the free-

om of the press. It is true that this principle was cited, but it was not made the sole basis of the decision.

From what has been said it must not be inferred that the political laws of the displaced sovereignty cannot be continued in force. To effect this purpose, however, an express declaration by the new sovereignty is necessary. Thus, at the time of the occupation of Porto Rico the laws relating to local government were continued in force by the military governor and in the Organic Act of April 12, 1900, it was provided that "the laws and ordinances of Porto Rico now in force shall continue in full force and effect, except as altered, amended, or modified hereinafter, or as altered or modified by military orders and decrees in force when this Act shall take effect."

Were no constitutional questions involved, the political and civil status of the inhabitants of newly acquired territory would be solved without difficulty. The general rule of international law is that a transfer of territory implies a transfer of allegiance unless the treaty of cession contains some provision to the contrary. In the treaty with Spain the option of retaining Spanish nationality was limited to Spanish subjects, natives of the mother country. The civil rights and political

status of the native-born inhabitants of Porto Rico and the Philippines were left to the subsequent determination of Congress. The extent of congressional discretion in this matter depends upon the constitutional effects of the treaty of cession. If newly acquired territory is thereby made part of the United States within the meaning of the Constitution, the political status, as well as the civil rights of the inhabitants are determined by the Constitution.[1]

The rules of international law with reference to the property rights of inhabitants of ceded territory are clear and definite and have been consistently adhered to by the Supreme Court. In United States *vs.* Percheman,[2] Chief Justice Marshall, in interpreting the eighth article of the treaty of 1819 with Spain, held that even in the absence of a treaty stipulation the private property of inhabitants of the ceded territory would be fully protected. "The people change their allegiance . . . but their relations to each other and their rights of property remain undisturbed."

[1] The discussion of this question will be found in the next chapter.

[2] 7 Peters: 51.

CHAPTER III

THE STATUS OF PORTO RICO—THE INSULAR DECISIONS

THE plan of action of the Executive in reference to the new possessions was clear and unmistakable. While wishing to extend to them the benefits of American institutions and to guarantee them the enjoyment of civil rights, the President proposed to reserve the right to deal with any emergency by affirming the principle of the unrestricted power of the Federal Government, subject only to the limitations contained in the Treaty of Paris. As stated by the Secretary of War: "The people of the islands have no right to have them treated as States, or to have them treated as the territories previously held by the United States have been treated, or to assert a legal right under the provisions of the Constitution which was established for the people of the United States themselves and to meet the conditions existing upon this continent, or to assert against

the United States any legal right whatever, not found in the treaty."[1] That Congress agreed with the President and his advisers is proved by its acts as well as by its omissions. On February 14, 1899, after the ratification of the Treaty of Paris by the Senate, a joint resolution was passed declaring that such ratification "is not intended to incorporate the inhabitants of the Philippine Islands into citizenship of the United States, nor is it intended to permanently annex said islands as an integral part of the United States."[2]

When in 1900 it became necessary to provide a civil government for Porto Rico, Congress was disposed to grant free trade and even to make the inhabitants citizens of the United States, but the fear that such action might be construed as a step toward the incorporation of both Porto Rico and the Philippines into the United States led to the imposition of the fifteen per cent. duty and the omission of any reference to United States citizenship. So until the Supreme Court passed upon the constitutionality of the plan adopted by the political organs of the Government, there was an element of uncertainty in the situation which reacted most unfavorably upon the administrative

[1] Report of Secretary of War, 1899, p. 26.

[2] Cong. Record, 55th Congress, 3d Session, vol. 32, p. 1847.

:y in the islands by postponing many important necessary measures.

'he decisions in the Insular cases were awaited there- : with an expectancy far keener than that which ceded the income-tax decisions and which only ıalled the interest aroused by the Legal Tender and : United States Bank decisions. The cases before : court presented only a few of the many important ıstitutional questions involved. It was hoped, how- er, that in dealing with them the court would formu- :e principles of interpretation sufficiently general to spose of the whole problem of the status of the Insu- r possessions.

The decisions as announced mark the most extraor- nary division of opinion in the history of the ıpreme Court. In the two most important cases— 'e Lima *vs.* Bidwell, and Downes *vs.* Bidwell—the ›nclusions of the court were announced by Mr. Justice rown. In the former he was supported by the Chief ıstice and Justices Harlan, Brewer, and Peckham; in e latter his concurring associates were Justices White, ıiras, McKenna, and Gray; the Chief Justice and ıstices Harlan, Brewer, and Peckham dissenting. To ld to the complexity of the situation the conclusions ached by Mr. Justice Brown in the Downes case are

supported by a totally different course of reasoning of the concurring Justices. In fact, in the concurring opinion of Justices White, Shiras, and McKenna it is distinctly stated that while concurring in the decree affirming the judgment in the Downes case, the grounds upon which the judgment is based are "different from, if not in conflict with, those" expressed in Mr. Justice Brown's opinion.

The series of opinions brings up in acute form the question of the desirability of elaborate dissenting opinions. If certainty is the highest desideratum of law, there can be no doubt that the criticism by the minority, of principles laid down by the majority of the members of the court, hardly conduces to this end. It furthermore tends to reduce the dignity of the decisions of the tribunal, and to that extent diminishes their authority. While this danger first became clearly apparent in the income-tax cases, it is greatly increased in the Insular cases, owing to the fact that the court is divided four to one in the reasoning supporting the majority's conclusions.

The decisions have served to bring out with great clearness the peculiar position occupied by the Supreme Court. Unlike any other tribunal, it is at times called upon to pass upon questions which, while legal in form,

are political in substance and profoundly affect the fabric of our institutions. Dissenting opinions on such questions are usually characterized by a tone of criticism which is not calculated to foster respect for the Constitution nor to increase the stability of our institutions. It is true that "government by discussion" might suffer by failure to present both sides of every important question, and it is likely that most of the objections to the present form of dissenting opinion would disappear if the dissenting Justices would confine themselves to the more positive exposition of their views and avoid any attempt at a destructive rebuttal of the reasoning of the majority.

The court in these decisions distinguishes three periods in the history of the status of Porto Rico. The first was embraced between the date of military occupation and the ratification of the treaty of peace. During this time the island remained foreign territory so far as the revenue laws are concerned, and customs duties could therefore be imposed under the war power. The second period began with the ratification of the treaty and closed with the passage of the Foraker Act. In the opinion of the court the effect of such ratification was to make Porto Rico domestic territory, and to take it out of the class of "*foreign countries*," within

the meaning of the Dingley Revenue Act. The collection of customs duties on Porto Rican products during this second period was therefore declared to be illegal. These two questions were decided in the De Lima and Dooley cases.

The third period began with the establishment of civil government, and was the subject of consideration in the Downes case. The court here makes a distinction between "those prohibitions of the Constitution such as go to the very root of the power of Congress, to act at all, irrespective of time or place, and such as are operative only" *throughout the United States* or among the several States. Porto Rico, it is held, while belonging to the United States, is not a part of the United States within the meaning of the Constitution. The court clearly intimates that the power of Congress with respect to the territories is not absolute. All those provisions which specifically restrict the competency of Congress are quite as applicable in the territories as in the States. "Thus, when the Constitution declares that no bill of attainder or *ex post facto* law shall be passed, it goes to the competency of Congress to pass a bill of that description." This would seem to make the bill of rights contained in the first eight amendments applicable to Porto Rico. In order to avoid the ap-

pearance of passing definitely upon this point the court says: "We do not wish, however, to be understood as expressing an opinion how far the bill of rights contained in the first eight amendments is of general, and how far of local, application."

To appreciate the full import of the decisions and the radically divergent views presented in the majority and minority opinions, it is necessary to make a brief analysis of each. The three cases—Dooley *vs.* United States, De Lima *vs.* Bidwell and Downes *vs.* Bidwell—present in logical order the questions examined by the court.

The case of Dooley *vs.* United States was the first involving the validity of customs dues collected prior to the ratification of the Treaty of Paris. It also involved duties collected subsequent to such ratification, but as this question is more fully discussed in the De Lima and Downes cases, it is only necessary to examine the Dooley case with reference to the one question of the validity of customs dues collected prior to April 11, 1899. On this point, and on this point alone, the court is unanimous. The exaction of customs duties during this period is justified as an exercise of the war power. "Upon the occupation of the country by the military forces of the United States the author-

ity of the Spanish Government was superseded, but the need for a revenue did not cease. The government must be carried on, and there was no one left to administer its functions but the military forces of the United States. Money is requisite for that purpose, and money could only be raised by order of the military commander. The most natural method was by the continuation of existing duties."

The validity of duties collected subsequent to the ratification of the treaty of Paris, but prior to the establishment of civil government, was involved in the De Lima case. Mr. Justice Brown delivered the opinion of the court; the Chief Justice, Justices Harlan, Brewer, and Peckham concurring. Two dissenting opinions were filed, one by Mr. Justice McKenna —Justices Shiras and White concurring,—the other by Mr. Justice Gray.

In comparing the majority and minority opinions the most striking difference is in the relative importance given to the factor of "expediency." The majority opinion adopts certain hard and fast rules of interpretation, and shows an evident disinclination to attach any weight to the inconvenience which might result to the political organs of the Government because of such interpretation. The minority opinion, on the other

hand, contains a broad treatment of the relation between the different departments of the Government, and it is easy to detect a settled determination to leave to Congress and the Executive a free hand in dealing with our new possessions. The minority is impressed with the fact that the power and influence of the Supreme Court of the United States has been largely maintained through well-established traditions of judicial self-control, which have led the court, whenever possible, to avoid placing obstacles in the way of the political organs of the Government when dealing with great questions of public policy.

To the majority, the question to be decided turns upon the meaning of the word "foreign," *i.e.*, whether Porto Rico after the ratification of the treaty of Paris remained "foreign territory" within the meaning of the tariff laws. To the minority it is one of public policy as well, to be examined with reference to the altered circumstances in the development of the country and also with a view to the probable effect upon the power of Congress and the Executive, if the rules as formulated by the majority prevail.

Whether Porto Rico is a foreign country within the meaning of the tariff laws presents itself as an extremely simple question to the majority of the court.

The definition of Chief Justice Marshall, "A foreign country is one exclusively within the sovereignty of a foreign nation, and without the sovereignty of the United States,"[1] is accepted as conclusive.

The first difficulty which the court meets in attempting to reconcile this conclusion with the established precedents is the case of Fleming *vs.* Page,[2] which was an action to recover duties on merchandise imported from Tampico (Mexico) during the occupation of that port by the troops of the United States. In that case the court laid down the rule that until Congress included such port within the customs lines, by establishing a collection district, Tampico remained a foreign port so far as revenue laws of the United States are concerned. The majority of the court in the De Lima case, while accepting the conclusions of Fleming *vs.* Page, qualify its application by regarding *as dictum* that portion of the opinion which relates to the establishment of collection districts.

The case upon which the court chiefly relies is Cross *vs.* Harrison,[3] which involved the validity of duties paid at the port of San Francisco upon merchandise

[1] The Boat "Eliza," 2 Wall. 4.

[2] 9 Howard, 603.

[3] 16 Howard, 164.

mported from foreign countries into California be-ween February 2, 1849—the date of the treaty of peace ›etween the United States and Mexico—and Novem-›er 13, 1849, when the collector appointed by the Presi-lent under an act of Congress passed March 3, 1849, ;ntered upon his duties. In this case the court held :hat "after the ratification of the treaty, California ›ecame a part of the United States, or a ceded, con-quered territory," and that "*as there is nothing dif-ferently stipulated in the treaty with respect to com-merce,*[1] it became instantly bound and privileged by the laws which Congress had passed to raise a revenue from duties on imports and tonnage." The italicized clause is important as it enables the dissenting justices to invoke the same opinion in support of their view.

But, even in the absence of all precedent, the majority holds that its conclusions would remain unchanged: "Were this presented as an original question, we would be impelled irresistibly to the same conclusion." Under the Constitution, treaties and laws of the United States are of equal force and effect. One of the ordinary incidents of a treaty is the cession of territory, and it follows from this "that by the ratification of the Treaty of Paris the island became territory of the United

[1] The italics are not in the original.

States—although not an organized territory in the technical sense of the word." The theory that "a country remains foreign with respect to the tariff laws until Congress has acted by embracing it within the customs union presupposes that a country may be domestic for one purpose and foreign for another." The conclusion of the court is therefore that "at the time these duties were levied, Porto Rico was not a foreign country within the meaning of the tariff laws, but a territory of the United States, that the duties were illegally exacted and that the plaintiffs are entitled to recover them back."

It is important to note that the military government was in operation more than a year after the ratification of the Treaty of Paris. Under the decision in the De Lima case, however, all duties collected after the ratification of the treaty, whether under military or civil rule, are invalid. While the military arm might continue to govern the island, the ratification of the treaty of cession made it domestic territory, and the power to exact further customs duties therefore ceased. This principle is laid down in Dooley *vs.* United States and reasserted in the De Lima case.

Between the majority and minority in the De Lima case, there exists an irreconcilable difference of opinion

as to the meaning of the words "foreign country," as used in the revenue laws. The minority unqualifiedly accepts the interpretation of Fleming *vs.* Page. "We submit," says Mr. Justice McKenna, "that the principle upon which Fleming *vs.* Page was based is still a proper principle for judicial application. Does it not make a government provident, not hap-hazard, ignoring transitory circumstances and producing good or ill accidentally? Does it not leave to the executive and the legislative departments that which pertains to them? Did it not stand as a guide to the executive—a warrant of action, so far as action might affect private rights? Indeed, what is of greater concern—so far as action might affect great public interests? It should, we submit, be accepted as a precedent. It is wise in practice; considerate of what government must regard, and of the different functions of the executive, legislative, and judicial departments and of their independence. Why should it then be discarded as dictum? If constancy of judicial decision is necessary to regulate the relations and property rights of individuals, is not constancy of decision the more necessary when it may influence or has influenced the action of a nation? If the other departments of the Government must look to the judicial for light, that light should burn steadily.

It should not, like the exhalations of a marsh, shine to mislead."

In the interpretation of Cross *vs.* Harrison the minority is no nearer the majority than in regard to Fleming *vs.* Page. Extracts from the opinion are quoted to show that no automatic application was given to the tariff laws in that case, but that their extension was made dependent upon the action of the President. To remove any further doubt the difference between the treaty with Mexico and the treaty with Spain is pointed out. The treaty with Mexico provided specifically for the incorporation of the ceded territory into the United States, whereas the treaty with Spain expressly declares that the status of the ceded territory is to be determined by Congress.

Finally, the views of the majority as to the effect of treaties of cession upon our domestic institutions are examined. If by such treaties all newly acquired territory must be regarded as domestic, immediately subject to all the laws of the United States, consequences of the gravest nature may result, particularly to the revenue system. "Its entire plan may be impaired or be destroyed by change in any part. The revenues of the Government may be lessened, and even taken away, by change; the industrial policy of

the country may be destroyed by change. We are repelled by the argument which leads to such consequences, whether regarding our own country or the foreign country made 'domestic.' If 'domestic' as to what comes from it, it is 'domestic' as to what goes to it, and its custom laws as well as our custom laws may be cast into confusion, and its business and affairs deranged before there is possibility of action. Under the theory of automatic and immediate incorporation neither we nor the conquered nation would have any choice in the new situation—could make no recommendation to exigency, would stand bound to a hopeless fatality. Whatever be the interests, temporary or permanent, whatever might be the condition or fitness of the ceded territory, the effect on it or on us, the territory would become a part of the United States with all that this implies."

In the opinion of the minority Porto Rico occupies a relation to the United States, "between that of being a foreign country absolutely, and of being domestic territory absolutely." Such a view "vindicates the Government from national and international weakness. It exhibits the Constitution as a charter of great and vital authorities, with limitations indeed, but with such limitations as serve and assist government, not destroy

it; which, though fully enforced, yet enable the United States to have—what it was intended to have—'an equal station among the Powers of the earth,' and to do all 'acts and things which independent States may of right do.' "

Mr. Justice Gray in a separate dissenting opinion points out that the majority opinion is irreconcilable with the unanimous opinion of the court in Fleming *vs.* Page, and with the opinions of the majority in Downes *vs.* Bidwell.

The De Lima case settled the question only of the applicability of the tariff laws of the United States during the period between the ratification of the Treaty of Paris (April 11, 1899) and the establishment of civil government (May 1, 1900). The Downes case which was made the subject of the most exhaustive analysis, by both the majority and the minority, involved the question of the validity of customs duties collected subsequent to the establishment of civil government.

In the De Lima case the court was only called upon to decide whether Porto Rico was a "foreign country" within the meaning of the tariff laws. For the decision of this question it was not absolutely necessary to discuss the applicability of constitutional provisions to the territories. The only question to be passed upon

as whether the ratification of the treaty had taken orto Rico out of the category of "foreign countries" ithin the meaning of the enacting clause of the ingley Tariff Act, which reads: "There shall be vied, collected, and paid upon all articles imported om foreign countries," etc. As was contended by he minority, the word "foreign" as used in that act nust be examined with reference to the intent of Congress in framing the tariff laws. To hold that Porto Rico was not "foreign" in the same sense that Germany or France is "foreign" does not answer the question at issue.

It is true that the court in the De Lima case took up the question of the applicability of the Constitution to the territories, but it did not give the subject the exhaustive treatment which we find in the Downes case. In the De Lima case the court held "that upon the ratification of the treaty of peace with Spain, Porto Rico ceased to be a foreign country, and became a territory of the United States, and that duties were not legally collectible upon merchandise brought from that island." In the Downes case the court was called upon to determine whether Porto Rico became a part of the United States within that provision of the Constitution which declares "that all duties, imposts, and excises shall be

uniform throughout the United States." The judgment of the court, answering this question in the negative, is concurred in by Justices Brown, White, Shiras, McKenna, and Gray. But while the majority of the court is agreed as to the validity of duties collected on goods coming from Porto Rico subsequent to the act establishing a civil government, there is, as has already been pointed out, a marked divergence in the reasoning supporting this conclusion. We have, in fact, three opinions to deal with. One by Mr. Justice Brown in which he announces the conclusions of the court; another by Mr. Justice White, concurred in by Justices Shiras, McKenna, and Gray, and a dissenting opinion by the Chief Justice, concurred in by Justices Harlan, Brewer, and Peckham. In the judgment, therefore, the court is divided five to four, but if we disassociate the judgment from the supporting opinions, we find a different grouping—Mr. Justice Brown stands alone, while the other eight justices are equally divided.

In any analysis of the decisions the opinion written by Mr. Justice White deserves first place inasmuch as it has the support of three of his colleagues—Justices Shiras, McKenna, and Gray. The leading premise in the reasoning of Mr. Justice White is that Congress, in governing the territories, is subject to the Constitu-

on; in other words, that "every provision of the Constitution which is applicable to the territories is also controlling therein." After a lengthy preliminary discussion, Mr. Justice White formulates the real question at issue: "Had Porto Rico, at the time of the passage of the act in question (Foraker Act), been incorporated into and become an integral part of the United States?" In answer the court invokes the principles laid down in American Insurance Company *vs.* Canter, that "if conquered territory be ceded by treaty, the acquisition is confirmed, and the ceded territory becomes a part of the union to which it is annexed, either on the terms stipulated in the treaty of cession *or on such as its new master shall impose.*" As Mr. Justice White cogently says: "To concede to the Government of the United States the right to acquire, and to strip it of all power to protect the birthright of its own citizens and to provide for the well-being of the acquired territory by such enactments as may in view of its conditions be essential, is, in effect, to say that the United States is helpless in the family of nations, and does not possess that authority which has at all times been treated as an incident of the right to acquire."

If the treaty-making Power has the right to effect the absolute incorporation of new territory into the United

States, the representative organ of the Government—the House of Representatives—would be stripped of its most important powers. "Although the House of Representatives might be unwilling to agree to the incorporation of alien races, it would be impotent to prevent its accomplishment, and the express provisions conferring upon Congress the power to regulate commerce, the right to raise revenue—bills for which, by the Constitution, must originate in the House of Representatives—and the authority to prescribe uniform naturalization laws, would be in effect set at naught by the treaty-making Power."

In the view of Mr. Justice White, the United States at the adoption of the Constitution consisted not only of States, but also of territories; but subsequently acquired territory, whether by purchase or by treaty, cannot be incorporated into the United States, except by the express or implied assent of Congress. "It is then, as I think," says Mr. Justice White, "indubitably settled by the principles of the law of nations, by the nature of the Government created under the Constitution, by the express and implied powers conferred upon that Government by the Constitution, by the mode in which those powers have been executed, from the beginning, and by an unbroken line of decisions of this

court, first announced by Marshall and followed and lucidly expounded by Taney, that the treaty-making Power cannot incorporate territory into the United States without the express or implied assent of Congress, that it may insert in a treaty conditions against immediate incorporation, and that on the other hand when it has expressed in the treaty the conditions favorable to incorporation, they will, if the treaty be not repudiated by Congress, have the force of the law of the land, and therefore by the fulfilment of such conditions cause incorporation to result. It must follow, therefore, that where a treaty contains no conditions for incorporation, and above all, where it not only has no such conditions but expressly provides to the contrary, that incorporation does not arise until, in the wisdom of Congress, it is deemed that the acquired territory has reached that state where it is proper that it should enter into and form a part of the American family."

While, therefore, at the time that these duties were collected (November, 1900), Porto Rico was not a foreign country in an international sense, "since it was subject to the sovereignty of and was owned by the United States, it was foreign to the United States in a domestic sense, because the island had not been incorporated

into the United States, but was merely appurtenant thereto as a possession. As a necessary consequence, the impost in question assessed on merchandise coming from Porto Rico into the United States after the cession, was within the power of Congress, and that body was not, moreover, as to such imposts, controlled by the clause requiring that imposts should be uniform throughout the United States."

In the opinion written by Mr. Justice Brown there is an evident intent to prove that the territories have never been considered a part of the United States within the meaning of the Constitution. He deduces this from the character of the Articles of Confederation, the wording of the Constitution, and the nature of the territorial government established in the Northwest Territory. The practice of the Government in dealing with the territories during the present century is examined with considerable detail, with a view to showing that Congress has recognized the fact "that provisions intended for the States did not embrace the territories unless especially mentioned." Mr. Justice Brown then proceeds to examine the precedents established by the Supreme Court and admits, at the outset, that the decisions of the court upon this subject have not been altogether harmonious. Before examining these

cases he is careful to lay down the rule established in Cohens vs. Virginia,[1] that "it is a maxim not to be disregarded that general expressions in every opinion are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the decision in a subsequent suit when the very point is presented for decision."

Having reached the conclusion that the territories are not to be considered parts of the United States within the meaning of the Constitution, Mr. Justice Brown proceeds to establish a distinction between such prohibitions as are operative only throughout the United States or in the several States, and such as go, irrespective of time or place, to the very root of the power of Congress to act. "When the Constitution declares that no bill of attainder or *ex post facto* law shall be passed, and that no title of nobility shall be granted by the United States, it goes to the competency of Congress to pass a bill of that description." On the other hand, when the Constitution simply states that a certain rule shall be established throughout the United States, such as that relating to the uniformity of duties, imposts, and excises, it becomes necessary to inquire

[1] 6 Wheaton, 264, 399.

only whether there be any territory over which Congress has jurisdiction which is not a part of the United States, "by which term we understand the States whose people united to form the Constitution, and such as have since been admitted to the Union upon an equality with them." The fact that there may be such territory is proved to the satisfaction of Mr. Justice Brown by the wording of the Thirteenth Amendment, which recognizes a distinction between the United States and "any place subject to their jurisdiction."

In order to quiet apprehension as to the danger of placing the inhabitants of a territory at the complete mercy of Congress, Mr. Justice Brown endeavors to strengthen the distinction between the two classes of constitutional restrictions by resurrecting the "natural rights theory," so dear to one of his former colleagues—Mr. Justice Field. "We suggest, without intending to decide, that there may be a distinction between certain natural rights, enforced in the Constitution by prohibitions against interference with them, and what would be termed artificial or remedial rights, which are peculiar to our own system of jurisprudence. Of the former class are the rights to one's own religious opinion and to a public expression of them, or, as is sometimes said, to worship God according to the dic-

tates of one's own conscience; the right to personal liberty and individual property; to freedom of speech and of the press; to free access to courts of justice; to due process of law and to an equal protection of the laws; to immunities from unreasonable searches and seizures, as well as cruel and unusual punishments; and to such other immunities as are indispensable to a free government. Of the latter class are the rights to citizenship, to suffrage, and to the particular methods of procedure pointed out in the Constitution, which are peculiar to Anglo-Saxon jurisprudence, and some of which have already been held by the States to be unnecessary to the proper protection of individuals."

The conclusion reached by Mr. Justice Brown is that, granting the right of the national government to acquire foreign territory, the presumption arises that its power over such territory is the same as that exercised by other nations over territory acquired by them, or as he forcibly puts it: "Choice in some cases, the natural gravitation of small bodies to large ones in others, the result of a successful war in still others, may bring about conditions which would render the annexation of distant possessions desirable. If those possessions are inhabited by alien races, differing from us in religion, customs, laws, methods of taxation, and modes of

thought, the administration of government and justice according to Anglo-Saxon principles, may for a time be impossible; and the question at once arises whether large concessions ought not to be made for a time, that ultimately our own theories may be carried out, and the blessings of a free government under the Constitution extended to them. We decline to hold that there is anything in the constitution to forbid such action.

Mr. Justice Gray, in filing an additional concurring opinion, agrees with Mr. Justice White and presents no new considerations of importance.

In comparing the opinions of Justices White and Brown, the main difference in the reasoning is to be found in the fact that Mr. Justice Brown does not regard any of the territories as part of the United States within the meaning of the constitution, and therefore holds those provisions which refer to a uniform rule throughout the United States inapplicable. Mr. Justice White on the other hand regards such provisions as applicable as soon as newly acquired territory is incorporated into the Union by act of Congress, but holds that the treaty making power cannot effect such incorporation. Congressional action or such acquiescence as may be construed equivalent to assent is necessary in order to make acquired territory a part of the United States within the

meaning of the constitution. In one sense, therefore, Mr. Justice White places narrower limits to the power of Congress than does Mr. Justice Brown, according to whom Congress, in dealing with the territories, is not bound by the provisions of the constitution which refer to the "*United States*," even after such territories have been incorporated into the Union by congressional action.

The dissenting opinion in the Downes case is presented by the Chief Justice; Justices Harlan, Brewer, and Peckham concurring. The opinion rests upon a strict interpretation of the provisions of the constitution relating to the powers of Congress. To the minority the case of Loughborough vs. Blake (5 Wheaton, 317) is conclusive. Mr. Chief Justice Marshall's interpretation of the constitutional use of the term, "United States,"[1] is accepted without reserve, and the view of the majority that such definition was *obiter* is unqualifiedly rejected.

[1] "The power, then, to lay and collect duties, imposts, and excises may be exercised, and must be exercised throughout the United States. Does this term designate the whole, or any portion of the American empire? Certainly this question can admit of but one answer. It is the name given to our great republic, which is composed of States and Territories. The District of Columbia or the territory west of the Missouri is not less within the United States

The rule of interpretation being settled, there can be no doubt as to the limitations on the power of Congress. The attitude of the dissenting justices is well illustrated by their approval of the doctrine, that the Constitution "neither changes with time nor does it in theory bend to the force of circumstances." It may be amended according to its own provision; but while it stands, it is a law for rulers and people, in war as well as in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances. Its principles cannot, therefore, be set aside in order to meet the supposed necessities of great crises. The question is whether, when Congress has created a civil government for Porto Rico, has constituted its inhabitants a body politic, has given it a governor and other officers, a legislative assembly and courts, with right of appeal to the Supreme Court, Congress can in the same act and in the exercise of the power conferred by

than Maryland or Pennsylvania; and it is not less necessary, on the principles of our Constitution, that uniformity in the imposition of imposts, duties, and excises should be observed in the one than in the other. Since then, the power to lay and collect taxes, which includes direct taxes, is obviously co-extensive with the power to collect duties, imposts, and excises, and since the latter extends throughout the United States, it follows that the power to impose direct taxes also extends throughout the United States."

the first clause of section eight of the Constitution impose duties on the commerce between Porto Rico and the States and other territories in contravention of the rule of uniformity qualifying the power. "If this can be done, it is because the power of Congress over commerce between the States and any of the territories is not restricted by the Constitution."

While concurring in the dissenting opinion of the Chief Justice; Mr. Justice Harlan, in a separate opinion, offers further reply to some of the doctrines laid down by the majority. The principle upon which he rests his view is that Congress has no existence, and can exercise no authority, outside of the constitution. "This nation is under the control of a written constitution, the supreme law of the land and the only source of the powers which our Government, or any branch or officer of it, may exert at any time or at any place. Monarchical and despotic governments, unrestrained by written constitutions, may do with newly acquired territories what this Government may not do consistently with our fundamental law. To say otherwise is to concede that Congress may, by action taken outside of the constitution, engraft upon our republican institutions a colonial system such as exists under monarchical governments."

In answer to the suggestion of Mr. Justice White that conditions may arise when, by the annexation of distant possessions, we shall be obliged to deal with an alien race, unprepared for the administration of government according to Anglo-Saxon principles, Mr. Justice Harlan says: "Whether a particular race will or will not assimilate with our people, and whether they can or cannot with safety to our institutions be brought within the operation of the Constitution, is a matter to be thought of when it is proposed to acquire their territory by treaty. A mistake in the acquisition of territory, although such acquisition seemed at the time to be necessary, cannot be made the ground for violating the constitution or refusing to give full effect to its provisions. The constitution is not to be obeyed or disobeyed as the circumstances of a particular crisis in our history may suggest the one or the other course to be pursued."

The opinions handed down in May, 1900, did not dispose of all the Insular cases before the court. Two questions of special significance remained to be decided, the first of which was whether the customs dues between Porto Rico and the United States could be construed as export duties and therefore prohibited by Article I., Section 9, of the Constitution, which provides that "no

tax or duty shall be laid on articles exported from any State." This question was presented in Dooley vs. the United States, commonly known as the second Dooley case. The court held (the Chief Justice and Justices Harlan, Brewer, and Peckham dissenting) that the word "export" could only apply to goods exported to a foreign country,[1] and as the court had already decided in De Lima vs. Bidwell and Dooley vs. United States that after the ratification of the treaty of Paris, Porto Rico was no longer foreign territory, it could not be maintained that goods carried from New York to Porto Rico were "exported" within the meaning of the clause above referred to. In answering the contention that the duty might also be regarded as an import duty upon goods coming into Porto Rico, the court referred to Downes vs. Bidwell (182 U. S., 244), which had decided the correlative question: viz., the right of Congress to impose duties on imports from Porto Rico, notwithstanding the provision of the constitution that all duties, imposts, and excises shall be uniform throughout the United States. The conclusion justifying the tax in this case, even if regarded as an import duty on goods coming from the United States into Porto Rico, was reached by the application of the

[1] Woodruff *vs.* Parham. 8 Wallace, 123.

principle that certain provisions of the constitution do not apply to Porto Rico and amongst these is the clause requiring uniformity in duties, imposts, and excises.

The other question, in regard to which the court postponed consideration until the October term of 1901, involved the status of the Philippine Islands subsequent to the ratification of the treaty of cession. The specific point presented in this case, which is known as the Diamond Rings case, was whether rings brought from Luzon to California subsequent to the ratification of the treaty of Paris, were imported from a foreign country. The only circumstance distinguishing the status of the Philippines from that of Porto Rico was the joint resolution of February 14, 1899, declaring that the ratification of the treaty with Spain was not intended to make the Philippines an integral part of the territory of the United States. As to this, the court held that the meaning of a treaty cannot be controlled by subsequent explanations. The fact that this resolution passed the Senate by a vote of less than two-thirds of the members present was given considerable weight.[1] The conclusion of the court was that the resolution "is absolutely without legal significance on

[1] The actual vote was 26 to 22.

the question." Following the principle laid down in De Lima vs. Bidwell (182 U. S., 1) it was held that with the ratification of the Treaty of Paris, the Philippines ceased to be foreign territory within the meaning of the tariff laws, and that the diamond rings in question could be entered free of duty.

Although a number of additional cases which might well be termed "Insular cases" were decided during the October terms of 1900 and 1901, the five cases cited contain the leading principles upon which all the others were adjudicated.

Any attempt to discuss opinions of such far-reaching political importance from an exclusively legal standpoint must necessarily meet with considerable difficulty. Their relation to our public policy is so intimate that their true significance can be appreciated only when examined in the light of the constitutional development of the country. The opinions themselves fail to separate considerations of public policy from strictly legal principles. Not that this is surprising; it lies in the nature of the questions involved. In discussing such an issue, the court is brought face to face with the broadest of political questions, namely, the adaptation of an instrument of government to an entirely new set of problems.

The legal controversy waged before the Supreme Court in the Insular cases is but a chapter in that larger struggle, whose successive stages are marked by such questions as the right to purchase Louisiana and Florida, the right to charter a United States bank, the right to enact a protective tariff, the right to govern the territories, and the right to issue legal tender notes. Not only do the arguments in the cases involving these questions bear close resemblance to those used in the Insular cases, but the division of opinion in the court is traceable to the same divergence of view as to the nature of our constitutional system. That the final result of the century of constitutional controversy is expressed in wider national powers, and in an ever-increasing ability of the national government to cope with great and new questions of public policy, is not without significance for the matters under consideration.

Whenever the Supreme Court has been called upon to decide questions relating to the power of the executive and legislative departments of the government over territory belonging to the United States, but not situated within any of the States, the court has, as a rule, decided in favor of the plenary powers of the political organs of the government. The desire not to hamper the executive and legislative authorities in the

oice of means, when confronted with great adminis-
ıtive problems, has at times led the court to resort
extreme forms of legal dialectics and even to legal
tions. It is true that, in the course of its opinions,
e court has often indulged in expressions tending to
ve support to both parties in subsequent controversies,
ıt the final judgment has, as a rule, broadened rather
an limited the discretionary power of Congress and
.e President. The case of Fleming vs. Page, which
ıe majority of the court in the De Lima case attempts
› qualify, but which is accepted unreservedly by the
ıinority and is invoked by four of the justices in the
›ownes case, is one of the most striking illustrations
f this attitude of the court. The expressions of
pinion as to the power of Congress over newly acquired
erritory in this and in subsequent cases show a settled
›urpose on the part of the court to leave the deter-
ıination of the status of such territory to the political
ırgans of the government.

When the court in Mormon Church vs. United States
136 U. S., 42) says, "the territory of Louisiana when
cquired from France, and the territories west of the
.ocky Mountains when acquired from Mexico, became
ıe absolute property and domain of the United States,
ıbject to such conditions as the government in its

diplomatic negotiations had seen fit to accept, relating to the rights of the people then inhabiting these territories," it is simply giving expression to a rule which was not, and could not have been embodied in the constitution at the time of its adoption, because the circumstances which called forth the rule were absent. Fortunately, however, the provisions of the constitution were framed in terms so general and the absolute prohibitions upon the central government were so few, that when a new situation arose, it was possible to meet the new requirements without doing violence to any constitutional provision. In National Bank vs. County of Yankton (101 U. S., 129), the court follows these well-settled traditions in formulating the principle that "the territories are but political subdivisions of the outlying dominion of the United States." Even in Cross vs. Harrison, so strongly relied upon by the majority of the court in the De Lima case, the expressions bearing on the specific point at issue, viz., duties paid after the ratification of the treaty with Mexico and prior to the admission of California as a State, tend to show the desire of the court to place California, prior to its admission, under the complete control of Congress.

As to the reasoning of the court in the Insular cases, it is interesting to note how largely the element of "ex-

pediency " enters into all the opinions, and especially in the dissenting opinions in the De Lima and Dooley cases. In the Dooley case Mr. Justice White, after examining in detail the inconvenience which would result if instantly, on the ratification of a treaty, articles coming from a newly acquired territory should be entitled to free entry into the United States, says: "All these suggestions, however, it is argued, but refer to expediency, and are entitled to no weight as against the theory that, under the constitution, the tariff laws of the United States took effect of their own force immediately upon the cession. But this is fallacious. For, if it be demonstrated that a particular result cannot be accomplished without destroying the revenue power conferred upon Congress by the constitution, and without annihilating the conceded authority of the government in other respects, such demonstration shows the unsoundness of the argument which magnifies the results flowing from the exercise, by the treaty-making power, of its authority to acquire, to the detriment and destruction of that balanced and limited government which the constitution called into being."

The majority in the De Lima case (the Chief Justice, Justices Brown, Harlan, Brewer, and Peckham), and the minority in the Downes case (the Chief Justice,

Justices Harlan, Brewer, and Peckham), express themselves as strongly opposed to a recognition of the principle of expediency, and yet a careful analysis of these opinions will show that while this class of considerations is not given the same prominence as in the dissenting opinion in the Dooley case, the court is unable to avoid a discussion of the influence of its conclusions on the powers of Congress and the President.

A comparison of the opinions in the Insular cases will show that in spite of the great divergence in conclusions, eight of the nine justices are agreed as to at least one important principle of constitutional interpretation. This fact has been obscured by the undue prominence given to Mr. Justice Brown's opinion in the Downes case. Mr. Justice White (Justices Shiras, Gray, and McKenna concurring) and the Chief Justice (Justices Harlan, Brewer, and Peckham concurring) are agreed that Congress, in governing the territories, derives its authority from the constitution and is bound by all its limitations. In other words, eight of the nine justices lay down the rule that Congress cannot withhold the constitution from territory under its control after such territory has been incorporated into the United States. As Mr. Justice White tersely puts it: "In the case of the territories as in every other in-

stance, when a provision of the constitution is involved, the question which arises is not whether the constitution is operative, for that is self-evident, but whether the provision relied on is applicable." This principle is of transcendent importance, as it sets at rest much of the uncertainty aroused by some of the earlier decisions of the Supreme Court of the United States.

The opinions of the four concurring and of the four dissenting justices in the Downes case diverge in the interpretation of the effect of the treaty of cession and the establishment of civil government, upon the status of Porto Rico. In the opinion of the four dissenting Justices the ratification of the treaty made Porto Rico a part of the United States, and therefore no act of Congress nor of the Executive, nor even their combined action, could treat Porto Rico differently from other parts of the United States. It is interesting to note that the same view is presented by Mr. Justice Brown in the De Lima case. On the other hand, Justices White, Shiras, Gray, and McKenna take the view in the Downes case, which is consistent with their view in the De Lima case—that a treaty of cession cannot make newly acquired territory a part of the United States in a domestic sense; that is, it cannot incor-

porate an alien people into the United States without the express or implied approval of Congress. They expressly repudiate the theory that the "Union of the United States" is a union of States only, and hold that the term "United States" within the meaning of the constitution, embraces the States and such territories as have been made part of the United States by the express or implied assent of Congress. The logical result of this rule is that Congress may insert in a treaty conditions against immediate incorporation. The view of Mr. Justice Brown is that the Union is a union of States alone, and that the territories do not form a part of the United States within the meaning of the constitution.

We therefore find three gradations of opinion as to the scope of the term "United States" as used in the constitution. The Chief Justice and Justices Harlan, Brewer, and Peckham take the view that as soon as new territory is acquired, no matter under what conditions or circumstances, such territory becomes a part of the United States within the meaning of the constitution, and all constitutional guarantees and limitations immediately become applicable. On the other hand, Justices White, Shiras, Gray, and McKenna hold that such newly acquired territory does

not become a part of the United States within the meaning of the constitution until the political organs of the Government—namely, Congress and the President—have given their express or implied assent to the incorporation of such territory into the United States. Finally, Mr. Justice Brown leans strongly to the opinion that the term "United States," as used in the constitution, refers to the union of States and does not include the territories.

Testing these three views by the strict canons of legal doctrine we find that each one has a basis in judicial precedent. This is largely due to the fact that the question of the applicability of the constitution to newly acquired territory has never presented itself in definite form to the court. The precedents cited in the Insular cases should be examined in the light of the principle laid down by Mr. Justice Taney in the Genesee Chief (12 Howard, 443), when, in justifying a departure from a principle laid down in an earlier decision, he said: "The great importance of the question as it now presents itself could not have been foreseen, and the subject therefore did not receive the elaborate consideration which at this time would have been given it."

The consciousness that a new situation confronts the country seems particularly evident in the opinion of

Mr. Justice White in the Downes case. His views give evidence of a desire to formulate a principle at once simple and intelligible. Whether we agree or disagree with his conclusions, it must be admitted that they furnish a clear and definite rule to guide the political organs of the government in dealing with newly acquired territory. The principle of interpretation as laid down gives to the legislative and executive authority complete power over such territory until, by express legislative enactment or by acquiescence in a treaty of cession, the acquired territory is made a part of the United States. Until such action is taken by Congress the territory remains subject to the jurisdiction of the United States, but does not become a part thereof, and the only limitations upon the power of Congress are those prohibitions of the constitution which go to the very root of the power of Congress to act, or, as Mr. Justice White says: "by those absolute withdrawals of power which the constitution has made in favor of human liberty, and which are applicable to every condition or status." The great merit of the principle as thus stated lies in the fact that it enables the political organs of the government to deal with the newly acquired territory in accordance with its requirements.

It is fortunate for the immediate needs of our public policy, as well as for the future expansion of the country, that the doctrine of immediate, irrevocable, automatic incorporation through mere cession has been repudiated. If the views of the four dissenting justices in the Downes case had prevailed, Congress as well as the Executive would have found their hands so tied as to make efficient government in our new possessions almost, if not quite, impossible. No instrument of government, no matter how perfect, can long withstand such a strain. In all the crises of our national life the constitution has been found adequate to meet new situations as they have presented themselves. In spite of some uncertainty as to the view of the court on a number of important questions relating to the government of acquired territory, a rule of interpretation has now been formulated, sufficiently broad to enable Congress to deal with the immediate necessities of the situation. Any interpretation which falls short of this requirement must react injuriously upon the authority of the Constitution. To preserve its authority, the principle set forth by Mr. Justice Story in Martin vs. Hunter's Lessee (1 Wheaton, 326) must ever be kept in mind:

"The Constitution unavoidably deals in general

language. It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications of its powers, or to declare the means by which those powers should be carried into execution. It was foreseen that this would be a perilous and difficult, if not an impracticable task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence. It could not be foreseen what new changes and modifications of power might be indispensable to effectuate the general objects of the charter; and restrictions and specifications which at the present might seem salutary, might in the end prove the overthrow of the system itself. Hence its powers are expressed in general terms, leaving to the legislature, from time to time, to adopt its own means to effectuate legitimate objects, and to mould and model the exercise of its powers as its wisdom and the public interests should require."

CHAPTER IV

CIVIL RIGHTS AND POLITICAL STATUS

In the public discussions of the status of the inhabitants of our newly acquired possessions, the question of political rights has become hopelessly confused with the question of citizenship. It has been assumed that the entire question hinges on the granting or withholding of United States citizenship, and that with such grant the constitution in all its parts and with all its limitations becomes applicable.

The distinction between what may be called the immediate and the ultimate consequences of the granting of United States citizenship becomes, therefore, a matter of more than theoretical interest. If by granting United States citizenship, Congress becomes bound by all the constitutional limitations in legislating for newly acquired territory, the consequences are far more serious than if such grant carries with it merely the distinctive rights of Federal citizenship.

The first question to be disposed of is whether Congress has, under any circumstances, the power to pre-

vent the constitution from becoming operative in any territory belonging to the United States; in other words, whether the civil and political status of the inhabitants is not fixed by the constitution independent of the will of Congress. The decision of the Supreme Court in Downes vs. Bidwell, although clearly stating the doctrine of congressional prerogative, attempts to reconcile this principle with the view that "all the constitutional provisions applicable to the territories are controlling therein." The principle laid down is that the treaty-making power cannot incorporate territory into the United States without the express or implied assent of Congress, and that it may furthermore insert in a treaty conditions against immediate incorporation. As Mr. Justice White in the concurring opinion says: "Where a treaty contains no conditions for incorporation, and, above all, where it not only has no such condition but expressly provides to the contrary, incorporation does not arise until in the wisdom of Congress it is deemed that the acquired territory has reached that state where it is proper that it should enter into and form a part of the American family." Applying these standards to Porto Rico, the conclusion is that while in an international sense it is not a foreign country since it is subject to the sovereignty of the United States and

s owned by them, "it was foreign to the United States n a domestic sense, because the island had not been ncorporated into the United States, but was merely appurtenant thereto as a possession." The only logical inference from this decision is that the acquisition of territory does not make it part of the United States within the meaning of the constitution, unless the political organs of the government so determine.

It is evident, therefore, that neither the people of the Philippines nor those of Porto Rico can claim United States citizenship under that clause of the Fourteenth Amendment which provides that "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside."

The question of the granting of United States citizenship resolves itself therefore into one of public policy, viz., whether the interests of the country would best be subserved by granting this privilege to the inhabitants of our island possessions. The answer to this question requires an analysis of the distinction above referred to, viz., between the immediate and ultimate consequences of such a grant. In other words, what are the distinctive rights of United States citizenship, and would a declaration by Congress granting such citi-

zenship carry with it the incorporation of such territory into the United States?

We are accustomed to speak of citizenship as covering the entire domain of civil and political liberty. The feeling of anxiety among the American people as to the consequences of extending United States citizenship to the inhabitants of our new possessions was largely due to the fact that to the great mass of our people such a step meant the granting of every civil and political right.

No definite answer to the question of the rights incident to citizenship is found in the earlier history of the country. During the Civil War the Attorney-General of the United States, when called upon to give an opinion concerning the rights of citizenship, was compelled to admit that eighty years of practical enjoyment of such rights under the constitution had not sufficed to define the "exact meaning of the word or of the thing we prize so highly."[1] Although the Dred Scott case marks the high-water mark of discussion of the subject, the question was not definitely settled until after the Civil War, when the relation between Federal and State citizenship had become a vital issue. Up to the time of the adoption of the Fourteenth Amend-

[1] Report of Attorney-General, 1862.

ıent, the theory and practice of our Federal system were ıat the States were the grantors and guarantors of the ındamental civil rights. The relation between that heory and the actual political development of the ountry affords an interesting and instructive instance ıf the dangers involved in a lack of harmony between ɔolitical ideas on the one hand, and political conditions ɔn the other. With the approach of the Civil War, the leep-rooted antagonism between the theory of our governmental system and the actual facts of our political development became more and more apparent. The supplanting of the government of the individual States in the South by the military arm of the Federal Govern- ıent, as the only means of protecting the emancipated ıegro, was a striking indication of the tendency in our ystem of government to place an increasing portion of he domain of civil liberty under the protection of the ıational government. The adoption of the Fourteenth ımendment was the constitutional expression of this endency. The report of the Senate Committee on this ımendment, as well as the discussions in and out of Congress, all tend to show that its main purpose was :o place the fundamental civil rights under the protec- tion of the Federal Government.

Before the question of the scope of the Fourteenth

Amendment was presented to the Supreme Court, the period of extreme centralization in national affairs had given place to one of decentralization. This led the court to adopt a principle of interpretation in construing the rights incident to Federal citizenship which differed in many respects from the one which the framers of the amendment had in mind. The famous Slaughter House cases,[1] decided in 1872, mark a turning-point in our constitutional development. The court drew a line of division between the rights appertaining to United States citizenship and those belonging to State citizenship. United States citizenship was held to include those rights which relate directly to the functions exercised by the Federal Government, such as the right of free access to any part of the territory of the United States, the right to protection on the high seas and in foreign countries. The fundamental civil rights such as the freedom of contract, and the security of person and property, were construed to belong to State citizenship and to be therefore under the protection of the individual States. Although it was severely criticised at the time, and is still objected to by a considerable section of the bar of the country, this view is still the law of the land.

[1] 16 Wallace, 36.

To one school of thought, these decisions meant the sacrifice of the bitterly contested achievement of the Civil War—the nationalization of civil liberty.[1]

However this may be, it is evident that under this interpretation the granting of United States citizenship does not carry with it the guarantee of an undisturbed enjoyment of the fundamental civil rights. Nor does it involve the granting of the suffrage. It has been repeatedly decided by the Supreme Court that citizenship does not necessarily carry with it the enjoyment of political rights. Citizenship may or may not be made the basis of participation in government. In our own political system large classes of citizens are excluded from the suffrage, and in many instances persons who have not been admitted to citizenship are made electors. In most of the States women are denied the franchise, although their status as citizens of the United States is unquestioned. Some of the States have admitted to the suffrage persons who are not citizens either of a State or of the United States. Nor does the Fifteenth Amendment grant the suffrage to citizens of the United States. It simply protects them against discrimination on account of race, color, or previous

[1] Cf. Burgess, Political Science and Comparative Constitutional Law.

condition of servitude. So long as these requirements are not violated, the State governments are unhampered by the Federal Constitution in prescribing the qualifications of electors.

If, therefore, the granting of United States citizenship fails to carry with it either the fundamental civil rights or the right of suffrage, it is difficult to see at first glance any inconvenience that would result from extending this privilege to the inhabitants of our new possessions. This was evidently the view of the Senate Committee in reporting the Porto Rican Civil Government Bill. The Committee's draft made the inhabitants of Porto Rico citizens of the United States "not because of any supposed constitutional compulsion, but solely because, in the opinion of the Committee, having due regard to the best interests of all concerned, it is deemed wise and safe to make such a provision." During the discussion of the report in the Senate the point was raised by the Democratic members that the granting of United States citizenship meant the incorporation of the territory into the United States, thus making the constitution in all its parts applicable to Porto Rico.

We are here brought face to face with the question as to whether the granting of United States citizenship would have entailed such consequences, and if so,

whether any serious difficulties would have resulted. The opinions in the Insular cases clearly show that the evident intention of the political organs of the government to avoid the incorporation of the newly acquired territory into the United States strongly influenced the court in its formulation of the principle that Porto Rico is not a part of the United States within the meaning of the constitution. In fact, this attitude toward the executive and legislative powers has from the very earliest period characterized the decisions of the court in similar cases. The principle formulated in Fleming vs. Page that "every place which was out of the limits of the United States as previously established by the political authorities of the government was still foreign," furnishes the keynote to the judicial doctrine. There were, it is true, other provisions of the Act of April 12, 1900, such as the tariff feature, which tended to show that Congress meant to treat Porto Rico as territory appurtenant to the United States but not a part of them. It is difficult, however, in such cases to determine how much evidence the court would have required as to congressional intent, and whether, in the absence of a manifest purpose to withhold United States citizenship, the evidence of the attitude of the political

organs of the government would have been sufficiently clear.

It will be remembered that under the decision in Downes vs. Bidwell the incorporation of newly acquired territory into the United States is left to Congress in all cases in which the treaty of cession does not provide for such incorporation. It is probable that had the Porto Rican Civil Government Act been modelled after the other territorial acts with the addition of a specific grant of United States citizenship, the court would have taken the view that Porto Rico had become part of the United States within the meaning of the constitution, with all that this entails.

It is a matter of great practical importance to determine the consequences of such an interpretation. As to the applicability of the first eight amendments, the court in the Downes case expressly refuses to lay down any rule. A careful analysis of the tenor of the opinion, however, leaves little doubt that the court would hold these amendments applicable as soon as newly acquired territory was incorporated into the United States, in spite of the fact that the judicial precedents on this point are not altogether conclusive. Reynolds vs. United States[1] was one of the first cases involving

[1] 98 U. S., 145. Decided in 1878.

this question. The point to be determined was the applicability of the Sixth Amendment to criminal prosecutions arising in the Territory of Utah. The court held that "by the Constitution of the United States (Amendment VI.), the accused was entitled to a trial by an impartial jury." Again in Callan vs. Wilson,[1] in which a similar question arose with reference to the District of Columbia, the court held that the amendments relating to trial by jury were binding on all the agencies of the Federal Government. In Thompson vs. Utah,[2] the court said: "That the provisions of the Constitution of the United States relating to the right of trial by jury in suits at common law apply to the territories of the United States, is no longer an open question."

The only doubt thrown upon the principle was in the case of American Publishing Co. vs. Fisher,[3] in which the court, in upholding the right of trial by jury in suits at common law in the territories expressed some doubt as to whether this right depended upon congressional enactment or could be invoked under the Seventh Amendment. "Whether the Seventh Amend-

[1] 127 U. S., 540. Decided in 1887.
[2] 170 U. S., 343. Decided in 1897.
[3] 166 U. S., 464. Decided in 1896.

ment to the Constitution," said the court, "which provides that in suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, operates *ex proprio vigore* to invalidate this statute may be a matter of dispute."

This view is consistent with the decision in Downes vs. Bidwell, in which the court, while holding that Porto Rico was not part of the United States within the meaning of the constitution, refused to express an opinion on the applicability of the amendments, and contented itself with the intimation that the people of Porto Rico, even if regarded as aliens, "are entitled under the principles of the Constitution to be protected in life, liberty, and property." Although the weight of judicial precedent is distinctly favorable to the doctrine that the amendments extend *ex proprio vigore* to the organized territories of the United States, much can be said against the soundness of the principle. The amendments were adopted as a concession to the fear of concentration of authority in the central government, and were intended to protect the inhabitants of the States from the dangers of encroachment upon individual rights by the Federal Government. No thought of the territories belonging

to the United States presented itself to the framers of these articles.

The consequences of any such automatic extension are so serious and of such significance to the future of our national policy in dealing with the peoples with whom we may be brought into contact, as to demand the most careful consideration. An analysis of the first eight amendments will show that certain of the articles (V., VI., and VII.) presuppose the traditions of the common law, and of a people trained to this system. In others, again, we find crystallized the history of a people whose struggle for civil liberty has extended over centuries, in which they developed the self-control and conservatism necessary to the full enjoyment of the acquired rights. None of these essential conditions present themselves in Porto Rico. Neither the grand nor the petit jury was known to the Spanish civil or criminal procedure as enforced in the colonies. Suddenly to introduce an institution so foreign to the legal traditions of the island would have seriously handicapped the authorities in the administration of the criminal law, if not in the suppression of crime itself. The mere fact of the absence of a highly developed law of evidence would have sufficed to introduce hopeless confusion and instability into the administration

of justice. Our law of evidence is the outgrowth of the jury system. Without it, trial by jury is apt to result in the confusion of relevant and irrelevant testimony. The experience with the jury law passed at the first session of the Legislative Assembly, furnishes conclusive proof of the nature of the difficulties involved even in a restricted application of the jury system.[1]

Embarrassments of a similar but no less serious character would have resulted from a strict application of the Second Amendment, especially during the early period of our occupation of the new possessions. In Porto Rico, it is true, the fact that the inhabitants warmly welcomed American rule, would have diminished the danger. Nevertheless during the period of excitement and unrest immediately preceding the first Insular elections, this prohibition would have seriously hampered the authorities in maintaining order and in guaranteeing security of person and property. In the Philippines it would have given protection to the unruly element, and furnished a cover under which conspiracy and treasonable plotting might have been carried on with impunity.

American rule in Porto Rico and the Philippines has taught us that the Bill of Rights as formulated in the

[1] For further discussion of this subject cf. Chapter XIII.

amendments to the constitution, occupies an important place in our constitutional system because it rests upon traditions which are part of the racial history of the people. The mental and moral qualities necessary to prevent the possession of these rights from becoming a menace to the peace and safety of society cannot be developed in a day. Instruction and guidance may pave the way, but the successful operation of the free institutions, of which these rights are but the outward expression, requires the slow and painful training of generations.

CHAPTER V

THE PEOPLE OF PORTO RICO

THE fact that the West Indies have been the foot-ball of international politics is reflected in their racial history. In no other part of the world has there been such a mixture of blood. In the English, Dutch, French, and Spanish islands, the entire gamut has been run from the aboriginal Caribs to the culture of Western civilization. Unfortunately the process of amalgamation has not always taken place under the steadying influence of stable family relations. Much of it has been the result of the promiscuous intercourse that usually accompanies slavery. A country in which the mass of the population has been kept either in slavery or in a condition of social and economic inferiority is certain to retain the sexual relations of a primitive period for a long time after the causes giving rise to these relations have disappeared. Porto Rico has not escaped the influences which have affected the group of islands of which it forms a part, although it has succeeded in avoiding some of the more unfortunate consequences.

In any study of racial conditions of the Spanish West Indies the aboriginal population may be entirely disregarded. Porto Rico at one time contained a large number of Indian tribes, but trace of them has been almost completely lost. The earliest history of the island [1] estimates the aboriginal population at the time of colonization by the Spaniards, at from one to six hundred thousand, but to-day there remain only sporadic instances of survivals of Indian traits.

In marked contrast with the Indian, the negro has been an important factor in the development of the island. But again in this, as in many other respects, Porto Rico has occupied an exceptional position. While in all the other islands of the archipelago the negro element has occupied an increasingly important position until it has become overwhelmingly dominant, in Porto Rico the white races have had the upper hand since the subjugation and extermination of the Indians. In 1899 the population of Porto Rico was 953,243. Of this total, 61.8 per cent. or 589,426 were pure white and but 363,817 or 38.2 per cent. colored. Under "colored" are included the negroes and all persons of mixed blood. The contrast with the other West Indian islands is marked. In Jamaica,

[1] Written by Fray Inigo Abbad in 1788.

for instance, the colored population forms 97.7 per cent. of the total; in the Leeward Islands 96.0 per cent., in St. Vincent 94.0, and in the Barbadoes 91.4 per cent. In fact, Porto Rico compares favorably with most of the Southern States. Mississippi contains 58.7 per cent. colored, South Carolina 58.4, Louisiana 47.2, Georgia 46.7, Alabama 45.3 and Florida 43.7

The explanation of this rather remarkable phenomenon is to be found in the economic history of the island. As soon as sugar became the most profitable and important industry of the archipelago, the demand for labor increased enormously, and recourse was had to the African coast as the most plentiful and, in fact, as the only available source of supply. Thus was inaugurated the system of slave labor that has largely determined the economic system of the entire archipelago. In Porto Rico, however, the total area adapted to the cultivation of sugar is much smaller than in the other islands. When high sugar prices prevailed during the early decades of the nineteenth centuary, the proportion of colored rose rapidly, until in 1820 it reached 55.6 per cent. The extension of the cultivation of sugar was confined to the coast regions, for land in the interior was best suited to the cultivation

of coffee, which called for a type of labor quite different from that which the negro could furnish. The heavy clay soil, constantly moistened by tropical showers, combined with the effect of the torrid sun, was disastrous to the negro. It is not surprising, therefore, that the extension of the cultivation of coffee and the decline in the price of sugar resulted in a gradual reduction in the percentage of colored from 55.6 per cent. in 1820, to 35.7 per cent. in 1897. Since American occupation the more favorable condition of the sugar market, due to the free entry of the Porto Rican product into the United States, has extended the production of sugar and has attracted a considerable number of negroes from the Danish and English West Indies. The influx would be far greater were it not for the stringent immigration regulations. The increase of the colored element from 35.7 per cent. in 1897 to 38.2 per cent. in 1899 furnishes ample evidence of this change.[1]

Another interesting fact concerning the racial composition of the Porto Rican colored population is the surprisingly small percentage of persons of pure negro blood. Of the total of 363,817 colored persons, 83.6 per cent. are of mixed blood. Compared with the

[1] The table on page 102 gives the figures in detail.

Date of Return.	Total Population.	White.	Colored.	Per Cent. of	
				Whites.	Colored.
1802.....	163,192	78,281	84,911	48.0	52.0
1812.....	183,014	85,662	97,352	46.8	53.2
1820.....	230,622	102,432	128,190	44.4	55.6
1827.....	302,672	150,311	152,361	49.7	50.3
1830.....	323,838	162,311	161,527	50.1	49.9
1836.....	357,086	188,869	168,217	52.9	47.1
1860.....	583,308	300,406	282,902	51.5	48.5
1877.....	731,648	411,712	319,936	56.3	43.7
1887.....	798,565	474,933	323,632	59.5	40.5
1897.....	890,911	573,187	317,724	64.3	35.7
1899.....	953,243	589,426	363,817	61.8	38.2

United States and the other West Indian islands these figures are at first surprising.

Country.	Date of Census.	Total Colored.	Persons of Mixed Blood.	Per Cent. of Mixed Blood.
St. Vincent.....	1891	31,559	554	1.8
United States....	1890	7,638,360	1,132,060	14.8
Leeward Islands..	1891	122,653	23,320	19.0
Jamaica.....	1891	621,176	121,955	19.6
Barbadoes.....	1891	166,693	43,976	26.4
Turks and Caicos.	1891	4,397	1,369	31.1
Cuba	1899	520,400	270,805	52.0
Porto Rico	1899	363,817	304,352	83.6

To the casual visitor the colored element in Porto Rico seems to be a far more important factor in the ethnic composition of the population than is actually the case. This is due to the tendency of the negroes to congregate in the coast towns. In some of the munic-

ipal districts, as in Mayaguez and Ponce, they form the dominant element of the population, 68.2 per cent. and 62.2 per cent. respectively. This gives rise to the impression that an overwhelming majority of the population is colored. As soon as one penetrates into the interior, the preponderance of whites becomes evident, the laborers on the coffee plantations almost exclusively being white.

The occupations of the inhabitants have been determined by the fact that Porto Rico always has been and is still an agricultural community. Over three-fifths (62.8 per cent.) of the working population are at present engaged in agriculture, a proportion far larger than in Cuba (48.1 per cent.) or in the United States (39.7 per cent.). The manufacturing and mechanical industries give employment to but 8.4 per cent., domestic and personal service to 20.5, trade and transportation to 7.6 and professional service to 0.7 per cent. The statistics of land tenure show that there are 39,021 farms and that the average area per farm is but forty-five acres. These figures seem remarkable when we consider that the sugar and coffee plantations usually cover an area of from 150 to 500 acres. The explanation is to be found in the fact that a considerable number of the plantation laborers own a small

piece of ground which is classed as a farm in the statistical calculations. The small average size of agricultural holdings is, therefore, misleading if we understand thereby the independent, self-supporting farm.

The statistics of graded occupations throw considerable light on this phase of the agricultural situation. Of the total number of breadwinners, male and female, 68.2 per cent. are classed as laborers, and 24 per cent. as merchants, carpenters, agents, servants, launderers, dressmakers, salespeople, and operatives in cigar factories. The remaining eight per cent. must, therefore, include all the other occupations, which is conclusive proof that the independent planter forms but a small percentage of the total number of breadwinners. The large number of agricultural holdings and the small average area of each can only be reconciled with the small proportion of independent planters, when we take into account the fact that a large number of those classed as agricultural laborers are also farmers on a small scale. A study of the conditions on the island fully confirms this conclusion. Throughout the interior, large numbers of the coffee plantation laborers own small patches of land upon which they raise sufficient rice, plantains, and bananas for their own use.

The relatively small amount of productive and

remunerative labor performed by women is an interesting and peculiar fact, confirmed by personal observation as well as by the statistics of occupations. Even under the more primitive conditions of the interior of the island, where it might be supposed that the burden of work would be shifted to the women, we find them leading lives of comparative idleness. In spite of the large families, the amount of housework is small, owing to the simple arrangement of the dwelling. A small hut with two or three rooms does not offer a complex problem of household management. The large amount of leisure, instead of being used in adding to the income of the family, is spent in idleness. It is difficult to account for this situation, or at least to analyze its underlying causes. Much is undoubtedly due to the inherited Spanish traditions, but the lack of development of an intense home life, in the sense in which this term is understood by the people of the North, is probably the main cause. In a tropical country, the dwelling occupies a far less important place in the life of the family than in the North. The greater part of the day is spent out of doors. Among the poorer classes the members of the family do not even assemble for meals; the scant ration of rice and beans is served on the doorstep or even in the middle of

the street. Individual and social pleasures are not grouped about the house as is the case in colder countries. Even among the wealthier element the home lacks the comforts and the attractive appearance of the northern home. Inadequately lighted, with a purely formal arrangement of furniture, and a depressingly monotonous collection of uninteresting ornaments, there is little to attract on the more material side. The group of associations which we seldom analyze, but which combined form the home ideal, are almost entirely lacking. The absence of these uplifting influences complicates the educational problem and makes the school a far more important factor in the training of the child than is necessary in the North. The influences surrounding the majority of pupils in the home do not tend to foster the habits which mean so much to industrial progress, viz., punctuality, regularity, consecutive application and continuity of effort.

Unfortunately, the lack of healthful recreation and pleasure in the homes of the poorer classes is not compensated for by a well-organized system of public recreations. In some of the countries of southern Europe, which present a condition of the home similar to that found in Porto Rico, the leisure time and

surplus energy of the population are consumed in public games and other amusements. The family spends much of its time in the public gardens and in other more or less innocent recreations. In Porto Rico, most of these social enjoyments are lacking. The monotony of the life of both the higher and lower classes is a real misfortune, for it leads to those forms of amusement which furnish the greatest excitement with the least expenditure of energy. Gambling is one of the most common of the vices. Attempts to repress it in certain directions merely lead to its reappearance in new forms. Cock-fighting, dice-throwing, crap-shooting, three-card monte, etc., are the most common forms of diversion. The attempt of the American military government to repress cock-fighting simply increased the indulgence in other forms of gambling. The civil authorities have been more successful in keeping this vice within bounds.

The lack of differentiation of vocations and particularly of avocations, involves consequences of a serious nature, affecting the stability of the institutional life of the country. In the United States the varied activities of the individual act as a conservative force, holding in check any radical or revolutionary tendencies. The great variety of interests develops a due

sense of proportion as to the importance of each, and prevents any one from becoming so dominant as to be tyrannical. Religious sentiment, while sincere and fervid, is tolerant; political feeling, although vigorous and aggressive, is not without appreciation of a point of view other than its own; class feeling, while relatively well defined, is not oppressive. On the other hand, the type of mind developed in a country in which the interests and activities of the population have not gone beyond their immediate trades and occupations, throws itself with almost fanatical fervor into each new recreation, diversion or possibility of social effort.

The extraordinary development of political activity immediately after the establishment of civil government in Porto Rico furnishes a most striking illustration of this principle. After four centuries of repressive measures the possibility of a free and unhampered exercise of political liberty was suddenly opened. The full force of the people's pent-up energy was thrown into political agitation. Had the church, the social club, or any other form of associational activity retained a hold on the public interest, it would have been less difficult to develop a due sense of proportion as to the importance of political agitation. With no such checks, the importance of political belief was exaggerated far beyond its

real significance and soon became a kind of religion, with all the fanaticism and intolerance which accompanies sudden outbursts of feeling. Party division in Porto Rico arouses an intensity of personal antagonism, which produces irreconcilable conflicts in the community, not only arraying families against each other, but often breaking family ties. Bitterness of feeling is not confined to the election period, but extends as a line of division in all social relations. Amusements are stamped as Federal or Republican according to the party affiliations of those taking part in them. In some of the towns, the public concerts and promenades were, by tacit agreement, frequented on certain evenings by members of one party, and on others by members of the opposite party. At bottom, this is due to a failure to realize that the politics of a community occupy a relatively unimportant place in the sum total of its activities. In the United States the excitement of a campaign period disappears immediately after the election. The minority cheerfully submits to the rule of the successful majority, knowing full well that its personal and property rights will be respected. During the election period the normal activities of the community are not seriously deranged, and with the announcement of results, political feeling subsides and almost dis-

appears. Not so in a country like Porto Rico, in which politics has become the main outlet for the reserve energy of the people. Instead of an incidental and relatively subordinate interest, it has become a kind of religion, with its array of fanatics and martyrs. Members of the same political faith are referred to as co-religionists. The minority, instead of acquiescing in the rule of the majority, attempts wherever possible to hamper and to clog the machinery of government. The majority in turn does not regard as inviolable the rights of the minority, and thus bitterness of feeling is increased. This fact alone tends to complicate the problem of government.

In the course of this discussion we have already had occasion to refer, incidentally, to the domestic life of the people of Porto Rico. It is a matter of some interest to examine somewhat more carefully the statistics of conjugal condition, as this is often used as an indication of the standards of morality of the people. Much has been written of the degenerate morals of the West Indian islands, and the statistics of illegitimate births have been adduced in proof thereof. In Jamaica, for instance, 63.7 per cent. of the births are illegitimate. Throughout the archipelago the number of "unparsoned" unions is appallingly large, and Porto Rico

forms no exception to the rule. The total number of consensual unions is more than one-half the number of legal unions. Of the total population of the island 16.6 per cent. are legally married and 8.8 per cent. are living together under no other sanction than mutual consent. For this condition of affairs many extenuating circumstances have been adduced. Some writers have attempted to lay the blame on the Church, because of the high marriage fees and the many necessary formalities. Whatever may have been the condition prior to American occupation, it is certain that the fees charged by the priests at the present time are most moderate and the formalities to be complied with are few and simple. The main cause is to be found in the conditions inherited from the period of slavery, when the lack of formal solemnization of unions prevented the growth of any sentiment as to the sacredness of the marriage tie. The condition of the poorer whites was little better than that of the negroes. In the rural districts the white laborer was in a position of dependence closely approaching serfdom, and mating was effected under conditions not far removed from the plantation slave. The proportion of consensual unions is greater among the colored population than it is among the white. Of the native white males 18.6 per

cent. are married, and 7.1 per cent. are living in consensual unions, while of the total number of colored males 12.4 per cent. are married, and 11.8 per cent. are living in consensual unions. Of the total number of white females 19.5 per cent. are married and 7.0 per cent. are living in consensual unions; while of the total colored females but 11.7 per cent. are married and 11.7 per cent. are living in consensual unions.

That these irregular relations are not accompanied by a vicious spirit has led to the conclusion that the ignorance of the population rather than moral delinquency is accountable for the lack of appreciation of the legally recognized marriage tie. Furthermore, the fact that many of the illegal or extra-legal unions are relatively permanent seems to take from them their immoral character. Mr. Livingstone in his work on "Black Jamaica" [1] points out that permanent alliances are contracted outside of matrimony, and dwells on the fact that if faithfulness to one another and not the ceremony of marriage could be the test, a far more favorable interpretation of the morals of the people would be made.

The fatal defect in this reasoning is its failure to consider the question from the point of view of the wel-

[1] Sampson, Low, Marston & Co.; 1899.

fare of the community as a whole. It may well be that these unions do not involve immediate moral degradation for either the man or the woman, and yet their ultimate effect must be the lowering of the moral tone of the community. The uncertainty and instability introduced into the family relationship react most unfavorably on the status of the children, and especially upon their training. Parental authority is weakly asserted and the feeling of parental responsibility sadly undermined. The children of these unions soon throw off the restraints of home influence, and are left to their own resources. Lasting and irreparable harm is thus done to the morals, economic efficiency, and the physical vigor of the population.

The situation is one with which it is extremely difficult to deal, since so much depends on the willingness of the women to enter into such unions, a factor which cannot be reached through legislation. The only feasible plan seems to be to increase the legal responsibility of the father by requiring him to assume all the obligations of a legally sanctioned union. A first step in this direction was taken in the revision of the codes. A further step was taken by the act of March 12, 1903, which provides that whenever a man and a woman publicly live together in the same domicile after the

manner of husband and wife, and a child is born to them, such union, if the parties thereto have the legal requisites and capacity to contract marriage and no legal impediment exists, is to be deemed a lawful marriage, having all the civil effects of a lawful marriage. A child born of such a union is to be deemed a legitimate child, entitled to bear the name of the father.

The discussion of the social condition of the people of Porto Rico is not complete without some reference to the startling illiteracy, and to the efforts that are being made to overcome it. Of the total population of the island but 143,472, or 15 per cent., were able to read and write at the time of the change of sovereignty. Excluding children under the age of ten from the calculation, and taking reading alone as the test of literacy, the percentage is increased to 22.7. The degree of illiteracy varies greatly in different districts. In the distinctively rural sections conditions are far worse than in the towns. Thus in San Juan 63.7 per cent. of the population over ten years of age are able to read, while in the agricultural district of Rincon but 9.9 per cent.

The effect of such widespread illiteracy upon the suffrage is readily apparent. The enforcement of an educational test would have excluded 76 per cent. of the males of voting age. A marked difference between

ıite and the colored population is noticeable. Of .tive whites 29.4 per cent. of the males over twenty- ɛars of age were able to meet the reading test as ared with 17.2 per cent. of the colored males of .me age.

e magnitude of the problem of reducing this illiter- lid not discourage either the military or the civil nment. General Brooke began the work of organ- a school system, and his work was continued by ral Henry, and carried forward with great vigor eneral Davis. It was not, however, until the lishment of civil government, that plans were laid thoroughly organized policy of popular education. ıring the three years that have elapsed since the lation of Governor Allen, a common-school system ıeen created, which is not only reducing the illit- of the island, but is also impressing upon the e some salutary lessons of civic obligation. Al- ;h the Insular government was compelled to pro- the funds for the inauguration of the project, and ı fact borne the main burden of expense in its opment, the towns have been compelled to make in sacrifices for its maintenance. The Commis- r of Education who planned the new system— Martin G. Brumbaugh and his successor, Dr. Samuel

McCune Lindsay—both realized that in order to develop a vigorous system of public education the interest and co-operation of the parents must be aroused. A feeling of local responsibility was nurtured which has been one of the most valuable factors in promoting the efficiency of the system. Under the present arrangement the Insular government is paying the salaries of all teachers, but the towns are required, when their resources permit, to furnish the school building and to provide for its maintenance. During the school year ending in June, 1903, twelve hundred schools were in operation, with a total enrollment of seventy thousand. Supplementing the common schools the Insular government has opened four high schools in the larger cities and a normal school in the town of Rio Piedras, seven miles from San Juan. In addition, the Department of Education is providing facilities for industrial, agricultural, and manual training, and is also establishing special schools in typewriting, stenography, and for the training of professional nurses. Of the total income from taxation, insular and local, twenty-eight per cent., or more than one-fourth, is being devoted to public education. The census of 1910 is certain, therefore, to present a very different picture from that of 1900. In the common schools of

to Rico the process of Americanization is being ied on with so much vigor and with such assur- e of success that there need be little misgiving as he attitude of the native population toward Amer- . institutions.

CHAPTER VI

THE PERIOD OF MILITARY RULE

On July 25, 1898, the American army of occupation landed at Guanica, and after a campaign of nineteen days military operations were brought to a close by the signing of the protocol, and by the President's proclamation announcing the establishment of a truce. The withdrawal of the Spanish troops on October 18th marked the beginning of complete American control. From that time until the establishment of civil government in May, 1900, the island was under military rule. A special military department was created, known as "The Department of Porto Rico," and at its head was placed Major-General John R. Brooke. On December 6, 1898, he was succeeded by Major-General Guy V. Henry, who in turn, on May 9, 1899, gave place to Brigadier-General George W. Davis. General Davis held the office of Military Governor until the inauguration of the Honorable Charles H. Allen, as Civil Governor, on May 1, 1900.

The period of military rule—from October 18, 1898,

to May 1, 1900—marks a most important epoch in the civic reorganization of the island. A sudden change of sovereignty, such as occurred in Porto Rico in 1898, is apt to introduce a spirit of unrest and to undermine accepted ideas of law and government. Unless a strong controlling and steadying influence is immediately exerted, instability is certain to follow. The primary requirement is the enforcement of the principle of authority. It is impossible to effect a sudden transition from paternalism to local autonomy, particularly with a population unaccustomed to the management of its own affairs. Military government, at such a period, meets the fundamental requirements in the maintenance of order and stability.

The greatest danger in the transition from the Spanish to the American system was that the native population would construe American rule to mean complete absence of restraint. Their knowledge of American institutions was based largely upon the generalizations of their political leaders. The idea prevailed that in the United States individual action was unrestrained, that every community enjoyed complete autonomy, and that the State and Federal governments extended a paternal care over the citizen, assuring him not only the opportunity to earn a livelihood, but also guaranteeing

a certain minimum of subsistence. During the period immediately succeeding the change of sovereignty the social fermentation caused by the influence of these ideas constituted a real menace to the orderly progress of the island. Fortunately, the military organization was a mechanism admirably adapted to meet the new situation and to keep these ideas from undermining respect for law and order.

The instinctive repugnance of the American people to military rule has obscured the fact that the army is a great civil as well as military organization, and that it possesses the inestimable advantage of mobility which enables it to provide, at short notice, a highly developed governmental organization in any part of the world where our interests may require it. During the early stages of our possession of new territory the army stands fully equipped to take up the fundamental duties of government and to push them with a vigor and efficiency far greater than would be possible under civil rule.

In the army we have, moreover, a police force thoroughly disciplined and able to command the respect of the population. The Quartermaster's Department, when combined with the Army Medical Corps, furnishes the material for a highly organized sanitary

service which rivals if not surpasses similar services in advanced civil communities. The Engineer Corps constitutes a highly trained department of roads, highways, and bridges. The Paymaster's Department employs a system of accounting and auditing which, although somewhat cumbersome, is admirably designed to protect the interests of the public treasury. In short, every branch of the service seems especially adapted to some public purpose.

During the early stages of our control of Porto Rico the most serious problems were those of policing and sanitation. For a time it looked as though the penalty for the accumulated grievances of centuries would be paid by the Spaniards resident in the island. The spirit of revenge showed itself in most alarming form, and before it could be checked several Spanish families were put to torture. It is doubtful whether, at that time, the civil authorities could have met the situation with the requisite vigor and energy. A native police force would have been ineffectual because of lack of discipline, and worse than useless because of its strong sympathies. The army here stepped in and performed magnificent service in the interest of order and civilization. It impressed upon the more turbulent element of the native population the lesson, not likely soon to

be forgotten—that American sovereignty means, above all, respect for law and order, and that the slightest breach of this rule entails swift and certain punishment.

It is characteristic of a people who have been held in a position of political inferiority, that when freed from such discrimination they show a disinclination to respect authority vested in any of their number. No other characteristic of the population has offered such difficulties in the organization of civil government as has this lack of mutual respect and confidence. It made necessary the policing of the island by the army during the first years of American rule. In fact, this period furnishes a number of interesting contrasts between civil and military government. In a number of towns two soldiers were able to keep perfect order, where eighteen or twenty native policemen were unable to meet the requirements, and the presence of an army post near a town was considered a far greater guarantee to person and property, than a large corps of native policemen.

The services of the military government in improving the sanitary condition of the island were of equal if not of greater importance than its maintenance of order and stability. At the time of the change of sovereignty it is no exaggeration to say that outside of the two larger

towns—San Juan and Ponce—there was no such thing as public sanitation. The streets in the smaller towns were unpaved, and no attempt was made to drain them or to remove accumulated refuse; there was, in fact, no appreciation of the value of a system of public sanitation. With the appointment of military officers as mayors of the towns, the work of enforcing higher standards of cleanliness was begun. For the first time in the history of the island the people were given an object-lesson in the possibility of increasing the attractiveness and healthfulness of their towns by the sweeping of streets and by the prohibition of the more flagrant violations of sanitary requirements. Indeed, in a number of instances, public sanitation has not reached as high a standard under civil rule as it attained during the military régime. In every case the presence of the army had a distinct influence in improving local sanitary conditions.

But there is another phase of military rule that deserves attention. We are prone to take for granted that military government means that army officers occupy every public position, that the public administration is organized on a purely military basis and conducted in an arbitrary manner. While this may often be the case, the history of military government

in our new possessions gives evidence of a sincere desire on the part of the military commanders to accord to the native population some participation in public affairs. The period of military government in Porto Rico was marked by a strong tendency toward the introduction of free institutions. Throughout the administration of General Henry, and particularly during the period in which General Davis was directing the affairs of the island, the guiding principle was to adapt native institutions to American standards whenever and wherever possible. The reforms actually effected extended to every branch of the public administration.

At the time of the establishment of the military government the system of administration was so cumbersome and complicated that the bulk of the revenues, insular and local, was consumed in salaries of unnecessary officials. This was quickly remedied by a new plan of organization, which reduced the actual administrative cost by at least sixty per cent. The reorganization thus effected impressed upon the natives the value of simplicity in organization, and economy in administration.

The three most important questions to which the military government addressed itself were the judicial organization of the island, the system of criminal pro-

cedure, and the system of taxation. The reorganization of the judicial system by the military government is fully described in a subsequent chapter.[1]

The system of criminal procedure had been used during Spanish domination as a means of intimidating the native population. It enabled the municipal judge or police magistrate to keep the accused in complete isolation during a period prescribed by law, and to subject him to a series of inquisitorial examinations for the purpose of extracting a confession. This was known as the "incomunicado." Not only was this arbitrary procedure swept away by the military government, but the protection guaranteed to the accused was strengthened by the introduction of the privilege of the writ of *habeas corpus*. It is true that this did not add as much to the safeguards of the accused as was expected, since neither the native lawyers nor the native judges understood the nature of the writ.

The third of the series of important changes introduced by the military government was the readjustment of the system of taxation, which is made the subject of discussion in Chapter XI.

The work of the military government was directed not merely to reforming the legal and financial system,

[1] Cf. Chapter XII.

but also to awakening in the population a sense of civic responsibility. With the change of sovereignty the municipalities were found to be practically bankrupt, and, to add to the difficulties of the situation, the hurricane of August 8, 1899, destroyed a considerable portion of their taxable property. As a temporary expedient, it was necessary to place military officers at the head of the local town governments, but it was felt that the political training of the natives could best be begun through their local governments. A plan for local elections to be held throughout the island was therefore placed in operation in November, 1900. An election law was drafted, a system of registration provided, and the supervision over the elections placed in the hands of mixed election boards of army officers and natives. In these elections the most perfect order prevailed, and absolute impartiality, both in registration and in the counting of the vote, was enforced. The contrast with the Spanish system was a revelation to the natives, and although they have not observed strictly the lessons thus taught during the first elections under civil rule, it is certain that the salutary effects have not been completely lost. The emphasis laid upon the impartial administration of the election laws, together with the swift punishment meted out to those who

tempted to indulge in intimidation or bribery, made lasting impression on the population. In the contact th the inhabitants of our new possessions it is the nsistent enforcement of this principle that will mean ɔre to them in their progress toward higher standards ın the emphasis of the rights of the individual.

From whatever point of view we examine the ques- n, therefore, it is evident that during the early stages our occupation of Porto Rico, military government .s not only desirable, but the only means of solving ɜ immediate problems of government. That it ıld not be continued for a longer period was due in rt to the fact that the idea of military rule is repugnant the political standards of the American people. ıen, too, a feeling of opposition toward the military vernment gradually developed among the natives, ıich was fostered by the leaders of the political par- s, who felt their power dwarfed by the close super- ion of the military authorities. They were able, thermore, to appeal to a well-developed demand for al self-government, with which the military govern- nt with its system of absolute central authority was ompatible. The fact that the military governors l exercised great forbearance and self-control was en little weight. There was a feeling that uncer-

tainty in the organization of the administrative institutions of the island would exist as long as this uncontrolled power of the military government continued. Early in 1900 it became apparent that the establishment of civil government could not long be delayed; conditions were such that considerable delay would have seriously diminished the usefulness of the military government, by depriving it of the support and goodwill of the native population.

CHAPTER VII

THE ESTABLISHMENT OF CIVIL GOVERNMENT

CONGRESSIONAL action on the Act for the establishment of civil government in Porto Rico was long delayed because of wide differences of opinion as to its tariff features. The opinion of the country seemed overwhelmingly in favor of the establishment of free trade, and there is no doubt that President McKinley sympathized with this view, but the desire of the majority in both Houses to maintain unrestricted control over the new possessions was a complicating factor in the situation. Congress did not wish to give color to the theory that it regarded Porto Rico and the Philippines as part of the United States within the meaning of the constitution. It wished to exercise without restraint the power reserved in Article 9 of the Treaty of Paris, which provides that the civil and political status of the inhabitants of Porto Rico and the Philippines shall be determined by Congress. During the discussions in the Senate, the leaders of the opposition emphasized the fact that the establishment

of fact made gave congressional sanction to the doctrine that Porto Rico was part of the United States, and that therefore in dealing with either Porto Rico or the Philippines Congress would be subject to all constitutional limitations. If Porto Rico alone had been concerned, it is not likely that the majority would have troubled itself to repudiate this assumption in organizing the civil government. The economic and administrative difficulties which would have arisen in the Philippines as a result of such an interpretation, however, were such as to lead Congress to change its policy with reference to Porto Rico, in order to avoid giving countenance to the theory so industriously advanced by the Democratic minority. As a result of the controversy, tariff duties amounting to fifteen per cent. of the Dingley tariff were imposed on goods coming from Porto Rico into the United States, and upon goods going from the United States to Porto Rico. The refusal to grant United States citizenship to the native inhabitants was dictated in part at least by the fear that the Supreme Court might construe such action as an indication of congressional intent to place Porto Rico in the same position as New Mexico or Arizona. The Act therefore provided that the native inhabitants should be deemed citizens of Porto Rico. All this was

done with a view to emphasizing the principle on which Congress insisted, viz., that our new possessions are not a part of the United States, as that term is used in the constitution.

The susceptibilities of the people of Porto Rico were aroused by this seemingly unfair discrimination, and it was also clear that the sentimental sympathies of a considerable proportion of the people of the United States were aroused on their behalf. In reality Porto Rico was most liberally treated, and the very measures which aroused the greatest amount of opposition in the United States were those calculated to be of most lasting benefit to the island. The fact that the native inhabitants were designated as citizens of Porto Rico and not as citizens of the United States did not deprive them, in the actual working out of the system of government, of any essential rights and privileges. The imposition of the fifteen per cent. tariff enabled the government to tide over a critical period in the finances of the island, for it must be remembered that Congress turned over to the Insular treasury not merely the customs duties collected in Porto Rico, but also all duties collected at ports in the United States on goods coming from the island. Moreover, the fact that the internal revenue laws of the United States were not

made applicable to Porto Rico prevented a serious crisis in the industrial development of the island, and enabled the Insular government to devise a system of direct property and excise taxes in close harmony with local needs.

On April 12, 1900, Congress passed what is known as "The Foraker Act," organizing civil government in Porto Rico. The form of government provided was a distinct departure from the existing as well as from the earlier form of territorial government. It was a compromise measure and as such naturally reflected conflicting views. President McKinley felt that the time was not ripe for the extension to Porto Rico, of the form of government which had prevailed, with the single exception of Alaska, in all the territories since the organization of the Wisconsin Territory in 1836. The leaders in the Senate, on the other hand, were unwilling to identify themselves with a plan of government which did not involve the introduction of representative institutions.

As a result of these conflicting views a form of government was created combining the characteristics of our early and later territorial enactments. Instead of providing for the election of both houses of the territorial legislature by popular vote, it declared that the

upper house, known as "The Executive Council," should be appointed by the President. The lower house, designated as "The House of Delegates," constitutes the representative branch of the local legislature. The peculiarity of the system is that the Upper House contains as *ex officio* members the heads of the six administrative departments provided for by the Act, together with five other members, also appointed by the President. This body enjoys certain independent powers of legislation and administration, which give it a dominant position in the affairs of the island. Its constitution is fixed by Section 18 of the Foraker Act, which provides that the President, by and with the advice of the Senate, shall appoint for a period of four years, unless sooner removed by the President, a Secretary, an Attorney-General, a Treasurer, an Auditor, a Commissioner of the Interior, and a Commissioner of Education, and that these six persons, together with five other persons, to be also appointed by the President for a like term of four years, by and with the advice and consent of the Senate, shall constitute an Executive Council, and that at least five members of this Council shall be native inhabitants of Porto Rico. Under this plan it is possible for the President to appoint experienced men from the States to take charge of these execu-

tive departments, and at the same time leave the control of the Executive Council in their hands.

The Act organizing civil government in Porto Rico took effect on May 1, 1900. Charles H. Allen, of Massachusetts, at the time first assistant Secretary of the Navy, was appointed civil governor, and arrived at San Juan on April 27, 1900. The period between the passage of the Act and the date when it became effective was so short that on his arrival in Porto Rico none of the officials provided for by the organic Act had been appointed. Governor Allen found the military government in full operation and most of the important Insular positions occupied by military officers. Under the statutes of the United States, military officers cannot hold civil positions without forfeiting their commissions in the army. The Civil Governor found himself confronted, therefore, with the rather unpleasant situation, that in three days the military government would cease, and all army officers occupying positions which involved civil duties would be debarred from performing them. In this emergency a joint resolution was passed by the Senate under which military officers in Porto Rico were empowered to continue to hold civil positions during the period pending the complete organization of the civil government. This resolution was held

up in the House, and on April 30 no word of its passage had been received. It was therefore necessary to resort to some extraordinary expedient in order to meet this untoward situation. In this emergency the provision of the Foraker Act was invoked under which the laws and ordinances of the island, except as altered, amended, or modified by the Act, or as altered or modified by the military orders and decrees, were to be continued in force. It was clearly within the power of the military governor, therefore, so long as his authority continued, to organize the government in such a way as to bring it into close harmony with the system that was to go into operation on the 1st of May. On the evening of April 30 General Davis issued a military order organizing the Insular government on a plan exactly similar to the scheme of government provided for by the Foraker Act. He then selected a number of civilians to fill the offices temporarily until such time as the President might make the appointments provided for in the organic Act. On the first of May, 1900, therefore, the civil government inherited an administrative system organized in harmony with the Foraker Act. As Governor Allen in his first report says, it was a *de facto* if not a *de jure* government. As the different heads of executive departments were

from time to time appointed by the President, the temporary officials appointed by the military governor were relieved, and in this way the transition from military to civil government was effected.

The first and most important work to be done was to organize the executive departments. The policy of the military government had lacked the necessary continuity for the development of a well-organized system. During the short period of military rule the island had passed through three different forms of executive organization. The Insular Cabinet system of the autonomous régime, known as the Council of Secretaries, was not formally abolished until February, 1899. It was replaced by four independent departments—state, justice, finance, and interior—with executive heads who reported directly to the military governor. By the military orders of July 15 and August 12, 1899, the executive organization was again changed. In the place of the Secretary of Justice, a judicial board composed of three native and two American lawyers was organized. The work of the state, treasury, and interior departments was transferred to a civil secretary, a board of public works, a board of charities, and a number of advisory boards. This system remained in operation until the military

order of April 30, 1900, organized the government in harmony with the provisions of the Foraker Act.

The heads of departments under the civil government found it necessary to devise a new plan of departmental organization. As the work progressed, the contrast between the Spanish and the American systems became more and more apparent. The people of Porto Rico had been accustomed to look to the heads of the executive departments for the solution of a number of questions which under our system are usually left to judicial determination. The task confronting the government was made all the more difficult from the fact that the Foraker Act made no attempt to define the powers of executive officials in other than the most general terms. It was taken for granted that the office of Attorney-General would fit into the Porto Rican system quite as well as into that of New Mexico. Under the Spanish system, however, the Attorney-General, or Secretary of Justice, as he was called, was the head of the judicial system, exercising a certain degree of administrative supervision over the courts. The traditions of the judicial system of the island demanded the presence of a controlling officer. It was necessary, therefore, for the Attorney-General to assume powers not contemplated by the Foraker Act. The courts

were constantly referring questions to his office which under our system would have been disposed of by court rules. To have refused to go beyond the duties usually performed by an Attorney-General of a territory would have been to deprive the judicial system of the island of one of its steadying influences. On the other hand, it was important that the Attorney-General leave to the courts the full responsibility for their acts and decline to interfere with their independence of action. To steer a course between these extremes has been a matter of great difficulty, and has called for a rare combination of firmness, patience, and forbearance.

The situation of the Secretary was similar to that of the Attorney-General. The Secretary of a territory has usually few duties to perform, and the office is regarded as one of minor importance. The Secretary of Porto Rico, however, fell heir to the duties formerly discharged by the Secretary of Government under the Spanish régime. He was supposed to exercise administrative control over the municipalities, and to be able, in fact, if not in law, to guide their policy. It was clear that to deprive the municipalities of the guidance to which they had been accustomed would seriously endanger the stability of local institutions.

While the Secretary exercised control over the admin-

istrative affairs of the municipalities, the Treasurer of Porto Rico was intrusted with the financial control. He was not merely the custodian of Insular funds, but also exercised a most important influence in guiding the financial policy of the towns. The inexperience of the natives in matters of taxation and finance was a perpetual menace to the financial stability of the town governments, and the treasurer was constantly being called upon to untangle local difficulties. It was furthermore necessary for him to exercise great care and watchfulness, in order to prevent the municipalities from violating the general tax laws of the island.

The task of greatest magnitude rested upon the Commissioner of Education. Not only had the department to be organized, but the system itself had to be created. Public education had been almost completely neglected by the Spanish Government. The Insular government was prepared to make great financial sacrifices to build up the system, and Congress turned into the Insular Treasury the accumulated customs receipts collected on goods coming from Porto Rico with a view to furthering educational interests.

The most important problem confronting the Commissioner of the Interior was the development of better means of communication. Although the Spanish

government had drafted innumerable plans for a system of Insular roads, the only highway actually brought to completion was the military road between San Juan and Ponce. Railway facilities were confined to a few coast towns, and their value was considerably diminished by the lack of continuity in construction; the unfinished and disconnected parts of the general system necessitated frequent trans-shipment, thus greatly increasing the expense. Goods shipped from San Juan to Mayaguez, a distance of but one hundred and seven miles, first travelled sixty miles by railway, then twenty-four miles by wagon, and then again twenty-three miles by rail. The expense involved made shipment of freight impossible, except between the immediate termini of each section of the road. The trading between distant points was carried on almost exclusively by water.

The local isolation resulting from the undeveloped means of communication, reacted most unfavorably upon the intellectual advance of the population. In the interior the ignorance and the relatively low industrial efficiency were largely due to the lack of contact with outside influences. An even more serious consequence was the dependence of the agricultural laborer upon the planter, which often reduced him to a con-

dition approaching so nearly to serfdom, as to be hardly distinguishable from it.

Although these conditions have been subjected to radical changes during the few years of American rule, the island is still suffering from the accumulated effects of four centuries of isolation. The splendid network of roads, the main sections of which have already been completed, is showing its effect upon the intellectual advance of the people, as well as on the island's industrial prosperity. The extension of the railway system is contributing to the same end. The increased mobility of the population has broken up the condition of serfdom which lay as a dead weight upon the rural districts, crushing out all ambition and neutralizing the efforts of the government to raise the industrial efficiency of the people.

CHAPTER VIII

THE PROBLEM CONFRONTING THE CIVIL GOVERNMENT

THE problem that confronted the civil government was in many respects unique and served to emphasize the essential difference between civil and military rule. The military government had performed a most important service, but it could not be expected to meet the special requirements which our administration of the island demanded.

Although military commanders often show marked ability in the administration of civil affairs, they are accustomed to expect unquestioned acquiescence in whatever policy they adopt. The slightest indication of opposition on the part of the native element usually leads to drastic measures—most frequently to summary removal. A spirit of sullen opposition is fostered by these conflicts, which is all the more dangerous because it is denied free expression. An even more serious difficulty is due to the fact that military traditions and military training develop in both officers and enlisted men a point of view and a standard of

action out of harmony with the ideals of civil government. Military officers are apt to show a contempt for a people of a different civilization, especially for a race which has been subjected to the enervating influences of a tropical climate. The contribution to civilization involved in the training of a population to manage its own affairs, arouses little enthusiasm. Their only standard is rapidity and efficiency in the performance of service, and anything tending to diminish such efficiency is unhesitatingly suppressed. In Porto Rico, it is true, the military government secured the co-operation of the native element, but whenever efficiency of service or rapidity of execution was endangered, such co-operation ceased.

Civil rule, on the other hand, involves the co-operation of the native element, not only when in harmony with the executive, but as a permanent, obligatory feature of the system. The Governor cannot set aside his advisers because they disagree with him on important questions of public policy, and unless he is able to co-operate with the native element, the public business is likely to be brought to a standstill. Even in the most favorable circumstances the handing over of a considerable part of the administration to the native element involves a reduction of efficiency. Civil authority is

unable to command the same obedience, or to exercise the same highly organized supervision which characterizes military rule. It is, furthermore, deprived of many of those resources that constitute so important a factor in the success of a military system. Starting without the splendid equipment of the army for the establishment of the fundamental public services, it is compelled, in the execution of these services, to use persuasion where the army may use command.

With a population untrained to participation in political life, with customs, traditions and a language different from our own, the difficulties confronting the civil authorities were without precedent in the history of our government. The situation was further complicated by the fact that nine months prior to the establishment of civil rule, the island had been devastated by the most destructive hurricane in the history of the West Indies. The entire coffee industry had been destroyed and a considerable proportion of the population made homeless. In these circumstances, the difficulty of arousing the population to a sense of its responsibilities seemed insurmountable, and yet this was the end which the civil authorities had constantly to keep in mind.

After the establishment of civil government the

political parties in the island became more aggressive. Civil rule was construed by the native element to be the beginning of a period of complete local autonomy. Local autonomy, in turn, was interpreted to mean the absolute, unrestricted power of the majority party, to harass and persecute the minority. Relieved from the close supervision of the military government, the local councils, elected pursuant to the military orders of 1899 and 1900,[1] immediately inaugurated a policy which threatened to ruin the towns financially, and aroused in the people a bitterness of party feeling constituting a real obstacle to progress. Local taxation was used as a weapon with which to punish the members of the minority party, and the local police was organized on a strictly partisan basis. At first the Insular authorities hesitated to interfere, hoping that these unfortunate tendencies would disappear; but it soon became apparent that inaction would be construed as weakness. As a result of this interpretation, the Insular authorities were forced to the conclusion that for some time strict supervision over the town governments would be necessary, the more conservative element of the native population being in complete harmony with such a policy.

[1] Military orders of September 21, October 12, October 19, November 18, December 7 and 8, 1899, and January 22 and March 12, 1900.

To meet the situation, the heads of executive departments were compelled to assume some of the powers formerly exercised by the Spanish Governor-General and his advisers. In the supervision over municipalities the Secretary of Porto Rico invoked the powers exercised by the Civil Secretary under the Spanish system. The same plan was pursued by the Treasurer and by the Commissioner of the Interior. This failure of the native population to recognize the necessity of an impartial administration of the law, has been one of the most serious difficulties with which the civil authorities have had to contend.

Another serious task was to impress upon the native population the fact that under American rule a new conception of the sphere of government would have to be developed. Under Spanish sovereignty the population had gradually become accustomed to a paternal government, and this largely influenced their attitude toward public affairs. They looked to the public authority for the solution of every difficulty, and if no action was taken little or no individual effort was made. It was taken for granted that prosperity was a matter which the government could assure, and that the absence of good times must be due to some defect in the governmental machinery. The numerous attempts during the first

session of the legislative assembly, to extend aid to different classes of individuals through the floating of public loans and other measures, were the logical outcome of the attitude of the native population toward government.

As the time for the first election of members of the legislative assembly approached, the difficulties of the civil authorities increased. During the period between October and December, 1900, the preparations for the election put the island into a state of feverish excitement. It is difficult for us to picture the intensity of feeling aroused in Latin countries by political struggles. The campaign which preceded the first elections not only divided communities, but created family dissensions and feuds. In a sense, the people were taking their politics too seriously. They did not appreciate the fact that the supremacy of either party would not materially affect the permanent welfare of the island, and that in the sum total of individual relations the question of political affiliation is by no means the most important.

As was feared, the intensity of party feeling soon became a menace to peace and good order. The mayors of some of the towns, in order to strengthen the party to which they belonged, enlisted special policemen,

whose main duty was to intimidate those suspected of belonging to the other party. The difficulties culminated in the attack on the printing-office of the Federal Party organ, an occurrence which marked the beginning of a series of disturbances in the city of San Juan. Owing to the excitable nature of the population, these disturbances were far more serious than would have been the case in the North. The greatest danger was that the other towns would follow the example of the capital and thus inaugurate a general condition of lawlessness which would seriously retard the industrial progress of the island.

In this crisis Governor Allen adopted the policy of impressing upon the people a sense of responsibility. Instead of calling upon the military arm, he made the town authorities understand that they were primarily responsible for the order of their communities, and that he proposed to hold them to strict account for the faithful performance of their duties. On the other hand, to those who stood in fear of unjust discrimination on the part of the local authorities the reply was made that until such authorities actually denied adequate protection, the Insular authorities could not be invoked. Although this policy involved some dangers, its effect was most salutary. The Insular government

night have stepped in immediately and policed the entire island with the military forces, but this would only have delayed the lesson which the native population had to learn.

Although there were disturbances in several parts of the island during the campaign period, the elections themselves were held under conditions of absolute quiet and order. By the time the election period arrived there were distinct evidences of a spirit of self-control and an aroused civic responsibility which were new factors in the political life of the island. The maintenance of order during the time of the first election contributed in no small measure to the development of a feeling of confidence in the purposes of the American administration.

CHAPTER IX

THE CONTACT OF THE SPANISH WITH THE AMERICAN LEGAL SYSTEM

THE history of our civilization presents few instances of direct contact between two different systems of law. In the case of the English common law and the Roman law, the blending was so gradual that the influence of one system upon the other can be detected only by the trained eye of the expert. Many of the rules of the Roman law which were grafted upon English jurisprudence were regarded as rules of action common to all human societies, rather than as principles peculiar to any particular system.

The history of English rule in India furnishes probably the best modern instance of the sudden contact of two civilizations, involving the question of the relation which the political and legal institutions of the one should bear to the other. The relationship, however, was that between a conquering and a subject people, to be dealt with on principles which such relationship dictated. Beyond the necessity of abolishing the semi-

barbaric institutions characteristic of a primitive civilization, few of the questions which arose required immediate solution, and most of them were, in fact, postponed until the accumulated experience of years of actual administration had pointed the way to a satisfactory adjustment.

The situation in Porto Rico presented a number of peculiar features. It was not the contact of a primitive with an advanced civilization, but rather the meeting of two civilizations, one of which was suffering from the consequences of arrested development. The distinction between a primitive and an unprogressive social condition is of fundamental importance in determining the principles of public policy to be followed in adjusting the inhabitants to the new institutional forms which change of sovereignty involves.

The civilization which the United States found in Porto Rico was unprogressive rather than primitive. Porto Rico had derived from Spain the sciences, arts, and mode of life of an advanced people, but had suffered from the effects of complete isolation from outside influences. The policy pursued by Spain was to keep the island free from any influences that might arouse a spirit of discontent. For a considerable period, the government exercised a strict censorship over all

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life. The dissatisfaction with Spanish rule, which found expression in sullen and passive resistance rather than in overt acts, led the people of the island to welcome enthusiastically a political system which promised emancipation from oppression and from unfair discrimination. As regards the system of private law, however, there was no well-defined public sentiment, except a certain dissatisfaction with the administration of the law, owing to the fact that it had been used as a means of favoring the Peninsular Spaniard and of discriminating against the native Porto Rican.

The Spanish and the American systems stand at the extreme poles of administrative organization. The one represents an advanced form of administrative centralization; the other a pronounced type of decentralized administration. The question presented itself how far the American system could safely be introduced without undermining social order and without introducing uncertainty and instability into public affairs. If the wishes of the native population alone had been consulted, there would have been an immediate and sweeping substitution of the American administrative system for the Spanish; in fact, it was taken for granted, that American rule meant the eradication of every vestige of the Spanish system. Distorted notions

of American political institutions led the population to believe that under American rule every office, insular and local, would be elective, and that the appointment of officials by the home government would be forever abolished. In spite of the efficiency of the military government, the fact that it seemed to perpetuate the traditions of the Spanish régime was sufficient to arouse considerable dissatisfaction. The situation was one of peculiar difficulty, for it was impossible to convince the natives that their view of the American political system was erroneous, and that, even if it were correct, to attempt to introduce it without gradual preparation for the change, would be doing irreparable injury to the interests of the island.

The Commission appointed by President McKinley to revise the laws of the island turned its attention first to the public law. The call for written suggestions preliminary to the hearings was answered with a deluge of petitions, requesting that local autonomy be assured and that local officials be relieved from all central control. There was general unanimity of opinion that until this was done no progress toward the Americanization of the island could be made. These written arguments were afterward supplemented in the oral hearings by a more elaborate insistence on the

necessity of introducing what the natives believed to be the American system of government. It was useless to point out that the development of local institutions in the United States was marked by a tendency toward centralization, owing to the inability of the local governments to meet those standards of efficiency which the best interests of the State demanded. The natives could not be made to believe that in matters of public education, public charities, and sanitation, State governments were exercising an increasing control over the action of local authorities, nor could they be made to see that the American system, instead of being the extremely decentralized government of the early years of the century, was becoming one in which the central government sets standards of efficiency and holds the local authorities to strict account for the maintenance of those standards. This principle guided the Commission in its recommendations for the reorganization of the political institutions of the island. The measures submitted to the Insular Assembly during the session of 1901 and 1902 placed the primary responsibility for the performance of such local services as sanitation, public charity, and the supervision and cleaning of highways on the local authorities. Through the development of the system of Insular boards of

control, the towns were held to strict account fo efficient service. Compared with the Spanish systen this plan was in the direction of decentralization, fo it guaranteed to the inhabitants of the towns and t their representatives, a degree of participation in loc affairs which they had never before enjoyed.

The questions of police and school administratic presented the greatest difficulties. In the former tl lack of confidence of the natives in one another ma it somewhat hazardous to place the entire police a ministration of the island in the hands of the loc authorities. The plan finally put into operation by tl Legislative Assembly was to place the entire policing the island in the hands of the Insular police, with tl one exception that in any city containing a populatic exceeding 10,000, the Governor was authorized, if sati fied that the city could bear the financial burden, withdraw the Insular police from such city, and en power the local authorities to organize a municip police. The law further provides, however, that if shall appear to the Governor that the city is unable maintain such a municipal police force, or that the pul lic order is not preserved, or that person and proper are not properly protected, he shall be authorized direct the Insular police to resume control, in whic

all the powers and functions of the municipal
shall lapse, and the authority becomes vested
ively in the Insular police force. Although this
undoubtedly involved an advanced form of cen-
ıtion, it met with the general approval of the
conservative elements of the population. Proba-
o other measure contributed so much toward
ng the feeling of uneasiness of the propertied
s, who showed great fear lest American rule
mean the dominance of the negro or the "peon."
the organization of the educational system also
s necessary to concentrate power in the central
nment, owing to the absence of local traditions and
sentiment in support of the common schools.
)lan adopted was to vest the educational control
entire public school system in the Commissioner
ucation, and, at the same time, to enlist the sup-
)f the inhabitants of the towns by allowing local
l boards to select the teachers from the list of those
net the requirements fixed by the department of
tion. The system has worked admirably, and it
ır to everyone who has observed its operation that
me years to come it will be necessary to keep the
ıistration of public education in the hands of the
ıl authorities.

While, therefore, the contact between the two political systems has resulted in a number of far-reaching changes, designed to make the administrative system of the island more American in character, it has been necessary to retain in the central government sufficient power to guard the local authorities from the results of their own inexperience. This necessity has given to the Insular administration a far more centralized character than is to be found in any of the States of the Union, but the plan of organization, and above all the spirit of the administration, is such as to favor a large measure of native participation in local affairs.

The adjustment of the system of private law to the new conditions created by the change of sovereignty was in some respects more difficult than the adjustment of the public law. This was due primarily to the fact that Spanish legal traditions had become deeply rooted in the habits and customs of the people. On the other hand, there were certain elements in the situation which made the task simpler than it at first appeared. The most important of these was the fact that it was not necessary radically to change the legal traditions of the island, at all events so far as the substantive law was concerned.

In dealing with the system of private law it was

important to remember that an influential class in the community—the lawyers—would be opposed to any radical changes. The natural conservatism of the bar was reinforced by the feeling that any recasting of the legal system would disorganize the profession, and place its members under the necessity of beginning their legal studies anew. Fortunately the need for radical revision was greatly reduced by the fact that in certain branches of the law there had been a gradual approach between the Spanish and the American systems. This is especially true of commercial law, and is directly traceable to the growth of international trade and the resulting necessity of common standards in adjusting commercial relations.

The questions involved in the revision of the codes of procedure presented considerable difficulty. Much has been said and written in condemnation of the Spanish criminal procedure, but these sweeping attacks have usually been wide of the mark. It is generally asserted that under the Spanish code the guilt of the accused is presumed, and that a rebuttal of this presumption is required to secure acquittal. The code contains nothing to this effect, but in the actual conduct of the trial, the details of practice tend to place the accused in a most unfavorable position. In the first

place, the "conclusions" of the Fiscal or District Attorney, which take the place of an indictment, are given great weight by the court and are usually accepted unless there is overwhelming evidence to the contrary. Furthermore, at the opening of the trial the accused is called to the witness-stand, and, although he is not required to be sworn, the effect is to place him in a position which requires him to prove his innocence.

In other respects the Spanish system is excellent, its greatest merit being definiteness in formulation, and perfect harmony of construction. A long series of decisions by the Court of Cassation of Madrid has cleared up every doubt as to the principles of interpretation. Even with its defects the system would not have aroused the distrust of the native population had it been properly administered. Its bad repute was largely due to practices either unknown to the law or in direct violation of it.

The first possibility that presented itself to the Commission was the removal of these abuses, combined with such an adaptation of the procedure to American standards as would offer greater safeguards to the accused. The difficulty of making a few changes without recasting the system as a whole, taken in conjunction with the manifest distrust of the native population toward the

Spanish system, led to the adoption of a plan which involved a radical revision of the code of criminal procedure. The codes of criminal procedure of California and Montana were so modified as to adapt them to local conditions and in this form they were proposed to the Legislative Assembly of the island as a substitute for the Spanish code. At the session of January, 1902, the new code of procedure was adopted and on the first day of July of the same year it went into effect.

Under the new code the initial proceedings in criminal matters are similar to those in the States of the Union. The office of committing magistrate is exercised by justices of the peace, who may hold the accused for trial and admit him to bail under the same conditions as prevail in the United States.

In the substantive law the plan recommended by the Commission and adopted by the Legislative Assembly was in many respects similar to the method of dealing with the codes of procedure. The criminal code was by far the most antiquated portion of the legal system, having been modelled after the earlier Italian codes. Like the Italian and earlier continental codes, offences against property were visited with severe penalties, while offences against the person were often inadequately punished. Thus such crimes as seduction

and rape were regarded as offences against the person injured rather than as crimes against society. When, therefore, the injured parties or their representatives were willing to forgive the offence, all proceedings in the matter were brought to a close. The new criminal code adopted by the Legislative Assembly in January, 1902, brings the Porto Rican system into complete harmony with the criminal law of most of the States of the Union. It abolishes the elaborate enumeration of aggravating and extenuating circumstances characteristic of the Spanish code, and gives wide discretion to the court in the determination of penalties.

The revision of the civil code presented questions of the most difficult and delicate nature. The rules regulating personal and property relations stand in closer contact with the traditions and inherited ideas of a people than does any other portion of the legal system. Any attempt at change, therefore, involves the danger of undermining the legal fabric and of thus destroying the respect for law and order. The Spanish civil code, although based on the "Siete Partidas," was subjected to such radical changes under the influence of the Napoleonic code that little of its original character remained. After passing through a series of additional revisions during the latter half of the nineteenth

century, it finally reached a degree of perfection, so far as precision of formulation is concerned, which made it decidedly superior in this respect to any of the Latin-European codes.

The points of difference between the Spanish code in force in Porto Rico at the time of American occupation and the civil law of most of our American States are referable to two causes; first, differences in the economic development of Spain and the United States; and secondly, differences in some of the fundamental social concepts, especially those dealing with family relations. In neither the Spanish civil code nor in the code of commerce do we find the corporate idea carried out with the degree of elaboration characteristic of the American law, and it was therefore a matter of importance to the industrial future of the island that this branch of the civil law be made to harmonize with our American system. The progress of the island depends upon the influx of American capital while the kinds of industries for which the island is best fitted—the raising of sugar and coffee—require such large investments of capital that they are more likely to be undertaken by corporations than by individuals. The same is true of the much-needed improvements in transportation facilities, both by land and by sea. The

changes required involved little more than the bringing of the existing law into harmony with modern industrial needs.

A far more serious problem was presented by those portions of the law in which the contrast with the American system was due to fundamental differences in social relations. Divorce, for instance, was unknown to the Spanish system because forbidden by the Catholic Church. It is true that in certain circumstances the marriage tie could be annulled, but this was done by an ecclesiastical court sitting as a special tribunal. The native lawyers were divided in opinion as to the advisability of introducing a right that might undermine the sanctity of the marriage tie. Under American military rule the civil code had been amended by military order to the extent of allowing divorce in certain specific cases, and it was pointed out that the large number of divorce proceedings instituted under this order was an indication of what might be expected if it were made a permanent part of the legal system. Although the advisability of introducing the right of divorce under certain circumstances was accepted by the Commission, it was felt that the changes should be made gradually in order to avoid any possible danger to the stability of the marriage-tie. The recommendation to the

Legislative Assembly therefore sanctioned divorce in the following circumstances: first, adultery on the part of either of the parties to the marriage; second, conviction of one of the parties of a felony involving loss of civil rights; and third, cruel and inhuman treatment. The Legislative Assembly took a more advanced stand and added five additional grounds for divorce, viz.:

First.—Habitual drunkenness or the continued and excessive use of opium, morphine, or any other narcotic.

Second.—The abandonment of the wife by the husband or of the husband by the wife for a longer period of time than one year.

Third.—Absolute, perpetual, and incurable impotency incurred after marriage.

Fourth.—The attempt of the husband or the wife to corrupt their sons or to prostitute their daughters, and connivance in their corruption or prostitution.

Fifth.—The attempt of the husband to prostitute the wife.

The revision of those portions of the civil code relating to testate and intestate succession presented peculiarly delicate problems. Under the Spanish system the testator was permitted the free disposal of only a portion of his property. The system of "forced

heirs," which prevails throughout continental Europe and is also characteristic of the Louisiana code, enables the heirs at law to claim their legal portion. The heirs by force of law under the Spanish system are as follows:

First.—Children and legitimate issue with respect to their fathers and lawful ancestors.

Second.—Acknowledged illegitimate children with respect to their fathers and natural ancestors, and with respect to the lawful ancestors when there is no legitimate issue.

Third.—In the absence of the former, fathers and lawful ancestors with respect to their children and legitimate issue.

Fourth.—The parents of the acknowledged illegitimate child in respect to him and his natural issue.

Fifth.—The surviving husband or wife in the form established by this code.

The legal share of the heirs in the first category is two-thirds part of the property of the father and of the mother, although the father or mother may dispose of one of the two parts for the purpose of applying it as a betterment to any one or more of their children and issue. In other words, one-third of the property, both real and personal, is to be divided into as many portions as there are heirs at law, each heir being entitled to one

portion. The testator may dispose of the second third by adding it to the legal portions of one or more of his or her children and issue. The final third is subject to free disposal. An heir by force of law can only be disinherited for reasons specified in the code.

The extent to which the freedom of the testator should be enlarged was made the subject of extended conferences with the leading lawyers of the island. There seemed to be very general reluctance to accept any modification of the system of "forced heirs." In deference to this feeling no change was recommended in this portion of the code, with the exception of the articles determining the status of the surviving spouse. The end in view was to better the condition of the widow so as to enable her to meet the responsibilities involved in the rearing of a family. Under the Spanish code the surviving spouse was assured half of the conjugal property absolutely and a life interest in a definite share of the remainder. The conjugal property, or "*sociedad de gananciales*," as it was called, included that portion of the estate which had been acquired subsequent to the marriage by the labor and industry of the husband or wife. Under this system the position of the widow depended upon the amount of property acquired

rformed this function so indifferently that the
on of the system and the transference to the dis-
ourts of the control over the administrators of
were very generally welcomed.

urth important change to be noted was in the legal
of married women. In judging the provisions of
anish civil code in this regard, it is important to
ı mind that the wider economic freedom enjoyed
rried women under our system of law is a matter
paratively recent growth. The countries of Latin
e and Latin America are only beginning to make
:s in this direction. The lawyers of the island and
of the leading merchants, although favoring some
ion of the legal rights of married women, were
: to conceal their misgivings as to the probable
of any radical changes in the traditions of the
h law. The modifications as finally adopted
: the powers of married women in a number of
ant particulars:

t.—Each of the parties to a marriage is made the
and administrator of his or her property. This
s a married woman to encumber or even to
e her own property without the consent of her
ıd.[1] Under the Spanish code all such acts
:d the consent of the husband.

[1] Section 160, Revised Civil Code.

Second.—While the husband remains the legal representative of the conjugal community, the wife may appear in court in all matters relating to the defence of her own rights and property, to the discharge of the *patria potestas*, guardianship or administration conferred on her by law, and for the maintenance of all rights connected with the independent exercise of a profession, employment or occupation.

Third.—Under the Spanish code the husband could encumber and alienate the property of the conjugal partnership (*sociedad de gananciales*) without the consent of his wife. The revised code expressly forbids this and makes any such transaction null and void unless the specific consent of the wife is secured.[1]

These innovations mark the first step in bringing the civil code into closer harmony with our own system. It is well that no radical changes have been undertaken, but that the plan of gradual re-formation has been adopted. Each session of the Legislative Assembly will probably make some modification, and in this way the population will gradually familiarize itself with the legal standards necessary to a progressive civilization.

Throughout the formative period of American rule, during which the system of law has undergone so many

[1] Section 1328 of the Revised Civil Code.

cations, the native population has shown a con-
and sincere desire to understand and to accept
can standards. The changes that have been
rest upon the willing acceptance of the people of
and, which is the best assurance that the new
will be administered in the spirit in which they
lesigned.

CHAPTER X

THE REORGANIZATION OF THE SYSTEM OF LOCAL GOVERNMENT

THE change from the absolutism of Spanish sovereignty to the republicanism of American rule immediately raised the question as to the possibility of introducing more liberal principles into the system of local government. To this question the natives gave a simple answer, taking it for granted that American rule meant local autonomy. After reading foreign commentators on our institutions it is not surprising that this impression should have been created. In most cases local self-government has been confused with local autonomy, and this view has gradually filtered down from the writers on political science to the mass of the people, until an exaggerated emphasis has been placed on the right of local authorities to enjoy freedom from all control.

It was, therefore, a keen disappointment to the Porto Ricans when, with the establishment of American military government, no radical changes were made in the system of local government. The slightest intimation

that the natives were not prepared to operate successfully the American system of local government was received by them as an unwarranted reflection upon their character and ability. The fact that the military government provided for the popular election of the mayors of the towns was not sufficient to allay the feeling that had been aroused, as it was clearly seen that the administrative supervision of the military governor would be in no wise relaxed. As a matter of fact, the commander of the American forces in Porto Rico made use of his power of control over local authorities to quite the same extent as the Spanish Governor-General.

The system of local government which the American authorities found in operation was similar in most respects to that prevailing throughout the countries of southern Europe, and was based upon the Napoleonic legislation. This legislation tended to crush out local spirit and local initiative by making the towns completely subservient to the central government. That it had this effect in France, Spain, and Italy is attested by the institutional history of these countries and its application in an even more severe form to Porto Rico led to the same results.

At the time of the change of sovereignty the island

was divided into sixty-six districts, which were known as *municipios*. The similarity in name is the only tie of kinship between these districts and our own municipal corporations. No attempt was made to separate the urban from the rural sections. The area of these *municipios* varied from 12 square miles in the case of San Juan to 159 square miles in the case of Utuado. The effect of this combination of rural and urban districts under one authority was to deprive the former of any real participation in the benefits of municipal services. The rural districts were taxed for municipal purposes, and the income from these taxes was expended almost exclusively within the distinctly urban *barrios* or wards. It is true that the construction as well as the repair and maintenance of local roads, was made the duty of the local authorities, but this duty was rarely performed and, in nine cases out of ten, the rural districts received nothing in return for local taxes. The situation was aggravated by the fact that the incompetence of local officials made it unwise for the Insular authorities to relax the administrative supervision over the towns. This assertion of control aroused a feeling of resentment in the local authorities which was a constant source of friction.

The Legislative Assembly which met in December, 1900, immediately addressed itself to the reorganization of local government, and introduced measures which contemplated the separation of the rural from the urban districts, the organization of the urban centres upon a plan similar to the American borough, village, and city corporation, and the introduction of a system of county government which should furnish the few necessary services to the rural districts. These measures were discussed in the Executive Council and in the committees of the House of Delegates, but, owing partly to disagreements and partly to the pressure of the appropriation bills, no final vote was reached.

As a result, however, of the laws relating to other subjects passed at the first session of the Legislative Assembly (December 3, 1900, to January 31, 1901), the system of local government was considerably modified. The school law of January 31, 1901, removed public education from the control of the municipal authorities by providing for the organization of school districts under the control of an elected school board. It is true that the school districts were made to correspond with the *municipios*, but they were given a relatively independent position by the provision that

"not less than ten per centum and not more than twenty per centum of all taxes collected and funds received from the Insular treasury by any municipality shall be set aside as collected and designated as 'School Funds.'"

Inasmuch as the most important source of revenue of the municipality, namely, the general property tax,[1] is collected by the Insular government, this provision practically gave to the school board a right to dispose of at least ten per cent. of the total revenue of the *municipio*. An amendment to the school law passed at the first session of the second Legislative Assembly, increased the percentage for school purposes to a minimum of fifteen per cent. and a maximum of twenty-five per cent. of all taxes collected and funds received by the *municipio* from the Insular treasury. The plan as adopted requires the school board to submit its estimates to the town council. Whenever such estimates exceed twenty-five per cent. of the receipts of the municipality from taxation and funds received from the Insular treasury, the town council is compelled to set aside not less than twenty nor more than twenty-five per cent. of such receipts.

[1] For a more complete description of the financial reorganization cf. Chapter XI.

Another important change was made in taking from the mayors of the cities their powers as police justices and vesting these powers in justices appointed by the Governor. This change tended to reduce considerably the power of the mayor, as it deprived him of what had proved to be most dangerous instruments of oppression.[1] A fourth significant change introduced at the first session of the Legislative Assembly was the authorization given to *municipios* with a population of ten thousand or over, to issue bonds for the purpose of constructing water-works, sewers, public buildings, bridges, for the grading and opening of streets or other necessary public improvements, or for the purpose of funding or taking up or paying off the floating indebtedness or liabilities. The authority to issue bonds was carefully safeguarded by a power of control reserved in the Executive Council as well as by strict provision with reference to interest and sinking-fund requirements.

Although the system of local government emerged from the first session of the Legislative Assembly considerably strengthened, the main question still required solution. Experience during the interval between the

[1] For full discussion of this subject see Chapter XII on The Reorganization of the Judicial System.

first and second sessions demonstrated that a more thorough reorganization of the system of local government was necessary, a fact recognized by Governor Hunt in his message to the Legislative Assembly at its second session which opened on January 2, 1902. Referring to the condition of municipal government, he said: "At present, the system is not good; it is unsatisfactory and expensive. . . . There are two ways of accomplishing improvement, one by classifying the largest municipalities as cities with improved charters, and all others as towns or villages; a second, by the consolidation of many present municipalities so as to reduce the number to about fifty, allowing present governmental forms to remain substantially as they are now."

A considerable portion of this second session of the Assembly was devoted to the discussion of municipal affairs, and it resulted in the adoption of three measures of far-reaching importance. The Act of March 1, 1902, reduced the number of municipalities from sixty-six to forty-six, by abolishing or disincorporating twenty municipalities and annexing them to the adjacent towns. This was followed by a general municipal law which reduced the membership of the council in municipalities with a population of twenty thousand or over to nine, and in those with a population of

less than twenty thousand to five. The Act furthermore provides for a mayor, to be elected by the qualified voters of the municipality, and for a secretary and a treasurer, to be appointed by the mayor. In municipalities with total cash receipts exceeding twenty thousand dollars, a comptroller elected by the council is provided, whereas in municipalities with an income of less than this amount the secretary is required to act as comptroller without extra compensation. Each municipality is required to organize a board of public charity with three members, two appointed by the mayor, the third being the local health officer, who is chairman *ex officio*. Municipalities whose total cash receipts are not less than twenty thousand dollars may provide for an inspector of public works, and every municipality, no matter what its income, must provide for a local health officer, to be appointed by the mayor.

An important feature of the Act is contained in section sixty-three, which gives the right of objection to any person resident within the limits of a municipality, who believes that his own or the general interests of the municipality have been injured by any ordinance, resolution, or act of the council, or of the mayor, or of any municipal officer. This objection may be urged by suit in a court of competent juris-

diction or by direct appeal to the Secretary of Porto Rico. These remedies enable a citizen to appeal to the courts whenever his personal or property rights are threatened, and also provide a form of redress against measures which, while not invading any distinct property right, may be regarded by the citizen as prejudicial to the best interests of the community. Although this Act is made applicable to all the municipalities of the island, the cities containing an urban population of eight thousand or over are, by an Act approved the same day, subjected to certain special conditions. In such municipalities the municipal council is made to consist of fifteen instead of nine members. The Act furthermore amends the general municipal law by providing for a local board of health consisting of three members, to be appointed by the mayor.

An important feature of these two Acts is the attempt to set definite limits to the number of local officials and to fix their maximum salaries. This involves a most important reform. Both under Spanish rule and during the early years of American occupation a very large percentage of municipal revenues was expended for salaries of unnecessary officers. The maintenance of a large corps of officials for the performance of a few

services was an abuse that had to be checked through very definite prohibitions and limitations.

One of the provisions in the new municipal law likely to have a significant effect on the financial condition of the municipalities is contained in section 42. The treasurer and the comptroller of each municipality are required to keep books of account, to deposit moneys and to make all disbursements "as provided by this Act, and in such manner and form as may be further prescribed by the Treasurer of Porto Rico," and to make "such annual or other reports of their actions to the Treasurer of Porto Rico as the latter may require." This section also gives to the Treasurer of Porto Rico the power, when so directed by the Governor, to examine into the affairs or the financial operations of any municipality, to take testimony under oath, and if any irregularity or negligence be discovered, the Governor, upon the report of the Treasurer, may suspend the suspected officer pending further examination. If as a result of such further examination sufficient proofs of irregularity or negligence be found, the Governor is required to remove such officer or officers, to appoint their successors for the unexpired term and to request the Attorney-General to institute such civil and criminal proceedings as may be necessary to protect the finan-

cial interests of the island and the municipal district or local division concerned.

Some of the powers contained in this provision were assumed by the Treasurer as an inheritance from the Spanish system, but their exercise was constantly questioned by local officials. Under the new law the Treasurer is able to exert a salutary financial supervision over all the municipalities of the island which is calculated not only to safeguard the interests of the taxpayers, but also to enable the municipalities to establish their credit upon a sure and permanent basis. Until now the greatest obstacle to the development of local credit has been the lack of assurance as to the integrity and efficiency of the local financial system.

Pursuant to the powers vested in him by this law, the Treasurer of Porto Rico formulated regulations to which all of the municipalities of the island are required to conform. These regulations cover not only the system of accounting but also the method of handling municipal funds, both in the disbursement and in the receiving of money. So far as possible bonded depositories must be used for the keeping of money and all payments must be made by draft upon such funds. The municipal comptroller is required to satisfy himself that all claims presented for payment are just;

that the services have actually been rendered; that an appropriation has been made for this specific purpose and that such appropriation has not been exhausted.

On the surface, this plan would seem to involve an extreme form of centralization in the administrative system of the island. More careful analysis shows, however, that the principle underlying the system gives to the municipality a wider range of free action than existed under the Spanish system, since it attempts simply to afford protection from losses due to the inexperience or incompetence of local officials. The primary responsibility for the efficient administration of municipal finances rests with the local authorities. The central government only steps in to correct abuses where such are found to exist.

Two laws passed at the second session of the Legislative Assembly deserve mention in this connection because of their effect upon the system of local government. The first of these, known as the "Road Law," removes from the control of the municipal authorities the local and rural roads contained within the municipal districts. This step was made necessary by the total neglect of rural or vicinal roads by the municipal authorities. The new law divides the island into seven road districts, corresponding to the election districts, which

are placed under the care of a board of road su visors composed of three members elected on a gen ticket from the district at large, at the same time as the representatives to the House of Delegates. T is the further provision that no two members shal chosen from the same municipality. In order to se a certain mimimum of service in connection with construction and maintenance of roads, it is prov that no less than twenty-five per cent. of all taxes lected on real property within the rural portion of municipal district shall be set aside and designate a road fund. This fund is to be turned over tc board of road supervisors of the district within w the municipality is situated in such manner and f as may be prescribed by the Treasurer of Porto R One of the most beneficial effects of this legislation be to assure to the property owners in the rural port some return for the local taxes which they are c pelled to pay. Inasmuch as the Insular governm has taken over the policing of all the rural district may be said that road construction is about the (additional service required by the inhabitants of tl sections. The failure of the municipal authoritie perform this service or even to make any serious tempts to do so fully justified the step taken.

change brings the system of local government a little closer to the American system and paves the way for a complete separation of the rural and urban districts in the administration of local affairs.

The plan of consolidation of municipalities which has been adopted is open to grave objections. It tends to emphasize the radical defect of the present system, viz., the combination of rural and urban districts under one local government. So long as this system is continued it will be impossible to develop a distinctive local sentiment or civic pride. With the policing of the island in the hands of the central government and the construction of local roads under district boards of supervisors, the rural portions of the present municipalities have no interest at stake in the local councils. Beyond these two fundamental services they have nothing to expect from the public authorities, whereas their representation in the local councils tends to destroy the unity of that body. The experience of all the countries of Latin Europe speaks with no uncertain voice on this point.

When the Legislative Assembly first faced this question of local government, the island was suffering not so much from an excessive number of municipalities as it was from a too great complexity in their organiza-

tion and from inefficiency in their administration. With a simple form of government and with the safeguards at present incorporated in the law consistently enforced, it should be possible to develop in the distinctively urban portions of the present municipal districts a civic pride which would strengthen the tone and raise the level of political life throughout the island. Until this is done it is doubtful whether the problem of local government in Porto Rico can be satisfactorily solved. Although each session of the Legislative Assembly has given the island some improvement in its administrative system, the progress in municipal affairs has not been so great as in other branches of the public service.

CHAPTER XI

FINANCIAL REORGANIZATION

ŒE early financial history of Porto Rico is closely iated with that of some of the other Spanish colo- especially Mexico and Venezuela. Instead of oping the resources of its several possessions the ish Crown forced the wealthier to support the less ed. During the period between 1766 and 1815 13,000,000 *pesos*[1] were contributed by the treasury exico to the support of the colony of Porto Rico. e present ratio of exchange this amounts to about ,000 dollars gold, although its real equivalent, ; to the higher purchasing power of silver at the of the eighteenth century, is considerably greater. ese contributions exerted an unfortunate influence e energies and activities of the people of the island, ended materially to retard their progress. At the f the eighteenth century local taxes furnished only

[1] *peso*, or Spanish dollar of 377 grains silver, has recently been ged by the American Government at the rate of sixty (60) cents

47,500 out of a total of 535,358 *pesos* necessary to carry on the government. The balance of 487,858 *pesos* was contributed from the Mexican treasury. Although a great variety of taxes was introduced no large revenue was provided owing to the lack of development of the Insular resources. Thus the "diezmo," corresponding to the continental tithe; that is, the tenth part of the produce of the land set aside for the church, produced only 19,500 *pesos* in 1778. In addition there was the "alcabala," a tax of two per cent. on sales and exchanges, of six per cent. on the export of rum, and of four per cent. on all other articles exported, which produced but 4,000 *pesos*. The tax on spirituous liquors produced 7,000 *pesos*, the customs dues 16,000, and a special license fee for the branding of slaves an additional thousand.

It was not until the middle of the nineteenth century, after the cultivation of sugar and coffee had brought the island to a position of relative prosperity, that a thorough reorganization of the system of taxation was effected. The first systematic attempt to distribute the burden of taxation between the agricultural and urban interests was made through the introduction of the territorial tax. This tax was levied on the net return from agricultural lands and on the rentals of urban

property. The merchants and trading classes generally were reached through the industrial and commercial tax. In the application of this tax the industries of the island were classified and a specific rate applied to each class.

Another fruitful source of revenue was the stamp tax, collected through the sale of stamped paper upon which all deeds, notes, bills of exchange, or other documents making transfers of property had to be executed. The high customs dues on articles imported from countries other than Spain added considerably to the revenues. The local governments derived the greater part of their revenues from the "*consumo*" tax, which was levied on articles of food, including such necessaries of life as bread, rice, beans, as well as on a long list of articles entering into the daily use of the people.

This system of taxation, while conforming to the views of the eighteenth century, was quite out of harmony with modern standards of equity. The method of administering the system of taxation tended to aggravate its injustice and inequality. Favoritism in the assessment of both the territorial and the commercial tax placed the native Porto Rican at a distinct disadvantage in competition with the Spaniard.

The period of American military rule in Porto Rico

was accompanied by a series of radical changes in the taxing system. One of the first official acts of the military governor was to abolish the stamp tax and the "*consumo*" tax. In place of the "*consumo*" tax a series of excises was introduced, beginning with a tax on alcoholic liquors manufactured in Porto Rico, and gradually extending to matches, imported oleomargarine, and playing cards.[1] The military government then turned its attention to the development of a number of minor sources of revenue and in November, 1899, introduced a school tax of one dollar for each family. A small revenue was also derived from the license fee for the carrying of firearms.

The next radical change was made in the territorial tax. In January, 1900, a military order abolished this tax and introduced a new form of property tax. The general principle of the Spanish territorial tax was retained so far as urban property was concerned, the tax being imposed on the rentals from city realty. An exception was made in favor of new houses, which were exempted from taxation for a period of two years.

[1] The rates imposed were as follows: Liquors manufactured in Porto Rico, three cents per litre; matches, one-tenth of a cent a box; oleomargarine, two cents per pound; playing cards, twenty cents per pack.

Non-resident owners were subjected to an addition of fifty per cent. to the usual rate. Agricultural lands were divided into five classes: cane, coffee, tobacco, minor produce, and forest lands; each of these classes being divided into three sub-classes, according to the quality of the land. Upon each class and sub-class a specific tax was imposed. This tax, during the short period of its operation, aroused great dissatisfaction. It was soon found that the specific rates imposed failed to correspond to the real productivity of the land, which resulted in an undue burden upon some proprietors and escape from taxation by others.

When the administration of the island was handed over to the civil authorities the system of taxation was by no means satisfactory. The customs dues were the only certain and unfailing source of revenue. Plans for a thorough reorganization of the method of taxation had been placed by the War Department in the hands of an expert commissioner, Professor J. H. Hollander, of Johns Hopkins University. Dr. Hollander was appointed Treasurer under the Civil Government Act, which went into effect on the 1st of May, 1900. At the first session of the Legislative Assembly, held in December, 1900, and January, 1901, the Treasurer submitted a comprehensive revenue bill which, after con-

siderable discussion, was finally passed January 31, 1901, and under which taxation in Porto Rico was made to conform to the system prevailing in the more advanced States of the Union.

The Revenue Act includes three distinct taxes: first, a general property tax; second, a system of excises; and third, an inheritance tax. The general property tax replaces the former territorial tax and the industrial and commercial tax. In the assessment all real and personal property is included, but provision is made for exemptions and other allowances in order to avoid any injustice or undue burdens. Persons whose total property is assessed for less than one hundred dollars, buildings and all appurtenances used for educational, literary, scientific, and charitable purposes, as well as every tract of land not exceeding five *cuerdas* (4.85 acres) upon which such buildings are situated, are exempt. Growing crops and products of the land actually owned by the producer and still in his hands are also declared free from taxation. Mortgages are treated as an interest in the property affected, and the mortgagor is permitted to deduct the amount of the mortgage from the assessed value of his property. The tax on the amount of the mortgage is debited to the mortgagee.

For the first year of its operation the tax rate for

Insular purposes was fixed at one-half of one per cent. In addition, the towns were permitted to levy a similar tax for local purposes, thus making the maximum rate for both Insular and local taxation one per cent. of the assessed value.

The excise feature was made possible by the liberal treatment accorded to the island by the Federal government. Instead of extending the Federal internal revenue system to Porto Rico, the Foraker Act specifically exempted the island from its operation. It was possible, therefore, to make the excise tax an important source of Insular revenue, and to adapt it to the peculiarities of the local situation. The Act as passed provided for three schedules in the excise system. Schedule A includes distilled spirits, beers and wines, cigars, cigarettes, and other forms of manufactured tobacco, playing cards, proprietary medicinal preparations, perfumery, cosmetics, toilet articles, oleomargarine, arms, ammunition and matches. The rates are considerably lower than those imposed on distilled spirits and tobacco by the internal revenue laws of the United States. In schedule B the license taxes imposed on wholesale and retail dealers in distilled spirits, cigars, cigarettes, manufacturers of tobacco, wines, and beers, and on arms and ammunition are

included. Schedule C comprises the documentary taxes, which include taxes on bills of lading, custom-house entries, instruments attested by a notary or recorded by a registrar of property. Under the provisions of the Act the local governments or *municipios* of the island are assured fifty per cent. of the proceeds from the sale of internal revenue stamps until June 30, 1901, and after that date fifteen per cent.

The third portion of the Act provides for an inheritance tax, graded according to the relationship of the heir and the amount of the bequest. Upon every devise, bequest, legacy, grant, or inheritance not exceeding five thousand dollars in value, the husband and all lineal heirs are required to pay a tax of one per cent., other relatives of whatever degree, and all other persons, associations, institutions, or corporations, a tax of three per cent. These are made the standard rates. When the bequest or legacy exceeds five thousand dollars but is less than twenty thousand, there must be paid on the excess over five thousand dollars one and one-half times the standard rate. When the amount is between twenty thousand and fifty thousand dollars, there must be paid on five thousand dollars the standard rate, on fifteen thousand dollars one and one-half times the standard rate, and on the excess over twenty thousand

dollars twice the standard rate. Where the bequest or inheritance exceeds fifty thousand dollars there must be paid on five thousand dollars the standard rate, on fifteen thousand dollars one and one-half times the standard rate, on thirty thousand dollars twice the standard rate and on the excess over fifty thousand dollars three times the standard rate.

When the law was first passed it aroused a storm of protest. The land-owners claimed that the rate of taxation would ruin them and the manufacturers and merchants threatened to close their factories and stores. But the government stood firm and in a comparatively short time adjustment to the new situation was made without any considerable difficulty.

The experience of the first year's operation of the law has fully justified the definite acceptance of the general principles upon which it is based. The few modifications found necessary were submitted by the Treasurer of the island to the Legislative Assembly in January, 1901. Most of these amendments affect the administration of the system of taxation rather than its form. All the important changes bear directly on the system of local finance, to which some general reference has already been made.[1]

[1] Cf. Chapter X on The Reorganization of the System of Local

The main change has been to give to the Insular a local governments, as far as possible, independ sources of revenue. It was found impracticable to ca out the plan common to many of the States, viz., to ass the taxation of realty to the local governments and retain the personal property and corporation taxes the central government. Many of the functions t are usually regarded as distinctly local in chara have been assumed by the central government in P Rico. Thus the maintenance of the educational sys is substantially an Insular charge. The policing of island—with the exception of the cities of Ponce Arecibo—has also been undertaken by the cer government. In these circumstances to have depr it of the general property tax would have crippled Insular administration, and so the initial plan of al ing the *municipios* to levy one-half of one per cen the assessment of real and personal property wa hered to. The corporation tax under the original was collected by the Insular government and ap tioned between the central and the local governm under a provision that, when the capital of a corp tion is divided into assignable shares, the Treas is directed to ascertain by whom these shares are and apportion them, for purposes of municipal t

tion, among the municipalities, according to the extent to which they are held by residents of such municipalities. When the capital is not divided into assignable shares, the law provides that it is to be assessed in the municipal district in which the corporation has its principal place of business, while shares held outside of Porto Rico are credited in the same way.

Aside from the fact that this system presented great administrative difficulties it favored a few large municipalities. Under the amended law the municipal districts are to have no share in the corporation tax proper, though they may, as heretofore, levy the local rate on as much of the real estate of a corporation as is situated within their limits.

Another significant change is the assignment of the excise tax to the exclusive use of the Insular government.[1] Under the original Act, the municipalities were entitled to an apportionment of fifty per cent. of the excise taxes collected by the Insular government, until July 1, 1901, and thereafter to fifteen per cent. In order not to deprive them suddenly of an important source of revenue, the amendment passed at the session of 1902 provides that during the fiscal year ending June 30, 1903, the municipal districts shall continue to receive fifteen per cent. of the excise taxes, during the

[1] Act of March 1, 1902.

ensuing fiscal year they shall receive but seven and one-half per cent., and after July 1, 1904, the excise taxes collected by the Insular government shall no longer be apportioned.

The general financial condition of the island since the period of American occupation has been most satisfactory, and this has been due in part, at least, to the liberal treatment by the Federal government. During the period of the Foraker tariff provision (May 1, 1900, to July 25, 1901), the Insular treasury received not only the customs dues collected on goods coming from the United States to Porto Rico, but also the duties on goods brought from Porto Rico to the United States. The total receipts from customs alone during the four years from July, 1899, to July, 1903, were $3,551,233.86. When the tariff between the two countries was abolished in July, 1901, the Insular treasury was still permitted to receive the customs dues on articles imported from foreign countries. The importance of this source of revenue will readily be seen from the budget of the island, which shows that fully thirty-three and one-third per cent. of the total income is derived from customs dues.

Some statement of the general financial condition of the island at the close of the fiscal year 1903 may not be

inappropriate in this connection. The total revenue of the island amounted to $2,449,992.94. Of this amount customs receipts furnished $771,447.90, the general property and internal revenue taxes $1,609,433.69, and minor sources, such as interest on deposits of Insular funds, tax on premiums of insurance companies, licenses of foreign corporations, etc., $69,111.35. The expenditures have been kept well within the revenues. In fact, the close of the fiscal year 1902–1903 showed a surplus of $344,310.58, an increase of $29,710.18 over the preceding year.

Although the general financial condition of the island is most satisfactory, it must not be supposed that all the financial problems have been solved. During the next few years the Insular government will have to undertake a thorough readjustment of the finances of the municipal districts which, as we have already had occasion to note, are in a most unsatisfactory condition.[1] Again, as soon as the trust funds, representing the customs receipts collected on goods coming from Porto Rico to the United States prior to the period of free trade, are exhausted, the island will need to borrow money for the execution of public works.

[1] Cf. Chapter X on The Reorganization of the System of Local Government.

Much has already been done to develop the credit of a few of the municipal districts, but the work that has been begun must be extended to include all the larger towns so as to enable them to meet the modern requirements of sanitation in matters of drainage, water supply, street paving and street cleaning.

This question of pledging the credit of the Insular and local governments has been in the foreground of discussion since the first session of the Legislative Assembly in December, 1900. But for the conservative influence of the Executive Council, a considerable number of loans would have been floated by the Insular government and far greater freedom would have been accorded to the municipal districts. The Council appreciated the fact that it would be folly to attempt any form of borrowing, until the credit of the island had been established, and this could be accomplished only by demonstrating that sound and conservative financial methods were being enforced by the Insular government. The desire of the House of Delegates to float a large Insular loan to be used to assist the planter, was successfully defeated by the Executive Council. When power was given to the municipalities to borrow money, it was hedged about with such guarantees that the cities of San Juan, Ponce, Mayaguez, and Arecibo were able to

float loans under comparatively favorable conditions. Mayaguez and Arecibo bonds bearing interest at six per cent. were sold at par; San Juan and Ponce bonds bearing the same interest brought a premium of 3.0625 and 3.5 per cent. respectively. It is no small tribute to the ability of those who have directed the finances of the island that in spite of the ruinous effects of the hurricane of 1899, and the temporarily depressing influence of the change of standard from silver to gold, the Insular treasury should have been able to meet all its obligations with such promptness as to command the confidence of investors in the States, and at the same time furnish a salutary lesson in economy, foresight, and prudence to the people of the island.

CHAPTER XII

THE REORGANIZATION OF THE JUDICIAL SYSTEM

THE reorganization of the executive and legislative branches of the government of Porto Rico, as compared with that of the judicial system, was a simple matter. Not only was a new form of executive and legislative organization expected, but it was eagerly welcomed by the native population. The people had become thoroughly accustomed to the judicial system introduced by the Spanish government. Notwithstanding its numerous defects, this branch of the system required much more delicate treatment than did the executive and legislative branches. The majority of the lawyers practicing in the Insular courts at the time of the change of sovereignty were natives whose training and traditions naturally led them to desire the maintenance of existing conditions. Although not opposed to the introduction of certain reforms, they felt that any radical change would throw the administration of justice into such a state of confusion as to react unfavorably upon public order and respect for the law.

The judicial system of Porto Rico under Spanish ule strongly resembled that of the mother country. 'lose connection with the executive branch of the gov- rnment was its distinguishing characteristic. Here, s in all the countries of Latin Europe, the contrast ith our own system, although at its origin merely a ifference in degree, had become a difference in kind. he inability of the judiciary of the Latin countries o assert its independence against the executive has een due primarily to the fact that it has never attempted o bring popular opinion to its support.

In Spain the intimate relation—one might almost say the merging—of executive and judicial functions continued for a longer period than in any other country of continental Europe, and this feature was even more marked in her colonial possessions. Constitutional provisions requiring a separation of the two departments could not overcome inherited traditions, and no indication of an independent judicial organization n Porto Rico is to be found before 1831. Even in he system as organized at that time the highest Insular court was presided over by the Governor-General, and it was not until 1884 that a serious attempt was made to separate the judicial from the executive branches of the government.

At the time of American occupation the ju system comprised the mayor's courts, the mun courts, the courts of first instance and the cou civil and criminal appeal. The jurisdiction c mayor's court, which was a purely local tribuna restricted to minor offences, such as the violatior cal ordinances, or executive decrees, known as "t municipales." In each municipality there was fi more a municipal court known as the "Juzgado M ipal."[1] Its civil jurisdiction[2] covered cases in the amount in controversy did not exceed 200 ($120 gold), provided the parties were able to a their suit amicably in court, but if litigation were sary the municipal judge could only take cogn when the amount in controversy did not exceed 2(($12 gold). In towns in which there was no court, the municipal court exercised jurisdict cases involving amounts as high as 30 *peso.* gold). The criminal jurisdiction of this court e ed to offences defined in the third book of the cr

[1] Title II, Chapter IV (Compilacion Organica Judicial d(mar), and Title III, Chapter I, of the Spanish Colonial J Law.

[2] Book I, Title V, Section III, and Book II, Title II, Cha of the Code of Civil Procedure.

code, and included the minor offences and misdemeanors.

Immediately above the municipal courts were the courts of instruction and first instance (Juzgados de Instruccion y Primera Instancia). To these courts, of which there were twelve in the island, was assigned the duty of conducting the preliminary investigations whenever a crime or felony was committed; they took the place in this respect of the coroner's court, and to a certain extent of the district attorney and grand jury in the American system. In civil cases these courts exercised original jurisdiction over all matters not within the competency of the mayor's and municipal courts.

The "Criminal and Territorial Audiencias" were the highest Insular courts. The criminal audiencia (Audiencia en lo Criminal) exercised original jurisdiction over all offences of the grade of felonies and crimes. The preliminary investigation conducted by the court of instruction, which was known as the "sumario," was forwarded to the criminal audiencia, and upon the basis of this document, together with such collateral investigations as he might conduct, the district attorney or "fiscal" formulated the indictment. There were three such courts in the island, one at

San Juan, one at Ponce, and one at Mayaguez. Each court was made up of three judges, and to each court was attached a public prosecutor and other necessary court officials. Appeal could be taken from the criminal audiencia to the Supreme Court at Madrid.

The territorial audiencia (Audiencia Territorial) occupied in civil cases the position of a court of appeals from decisions of the court of first instance (Juzgado de Instruccion y Primera Instancia). This court was made up of seven judges and was exclusively a court of appeals with the one exception that it exercised original jurisdiction in impeachment proceedings brought against other judges.

The reorganization of the judicial system did not take place until some time after the establishment of American rule. The leaders of local opinion showed marked distrust of any radical changes. It was evident, however, that the existing courts were inadequate to deal with the exceptional situation which the war had created, especially in the prosecution of criminal cases. The spirit of lawlessness which always accompanies the unsettled conditions of war manifested itself in brigandage and in attempts to wreak vengeance on the Spaniards resident in the island. In December, 1898, therefore, the military commander

ıed the following order: "It having become evident
t owing to their slow process and the overcrowded
te of their dockets the civil courts cannot act with
ficient promptness against the bandits that are still
nmitting crimes of arson and murder on the island,
re not having been a single conviction in such cases,
d an immediate example being necessary, military
nmissions will be appointed for the trial of such
ses as may be properly brought before them."
Military commissions were immediately organized
four of the towns, San Juan, Ponce, Mayaguez and
ecibo, and performed signal service in repressing law-
sness, and especially in impressing upon the more
bulent element of the native population that Amer-
n rule meant respect for law and order. The suc-
sful operation of these commissions led the military
nmander to apply to Washington for authority to
:lare martial law in any sections of the island that
›wed indications of lawlessness or instability. In
ınting the power to establish military commissions
: Secretary of War recommended that wherever pos-
le provisional courts be substituted for military
nmissions. Accordingly, by order of June 25, 1899,
: commanding general created a provisional court
mposed of three judges: one law judge and two

army officers. This court was given jurisdiction over all offences usually cognizable in a United States court, and during the ten months of its operation performed excellent service in strengthening the belief of the native population in the impartiality of American rule.

The reorganization of the local judiciary was made by military orders of July 15 and August 15, 1899.[1] Under this plan the municipal courts were retained and were assigned the additional duty of conducting the preliminary hearings and preparing the "sumario" in criminal cases, a function hitherto exercised by the Judge of Instruction (Juez de Instruccion). The civil jurisdiction of the former court of first instance was transferred to the district courts, of which five were established. To these district courts was also transferred the criminal jurisdiction of the Audiencia en lo Criminal. In order to fulfil the function exercised prior to American occupation by the Supreme Court at Madrid, an Insular Supreme Court composed of five justices was created.

Under the new system the jurisdiction of the municipal courts was considerably enlarged. In addition

[1] General Orders, No. 98, series of 1899, and No. 118, series of 1899.

to the preparation of the "sumario" in criminal cases they were given jurisdiction:

First.—In all civil cases where the amount involved between litigants does not exceed $400.[1]

Second.—In criminal cases of (1) misdemeanors, as provided in book three of the criminal code; (2) petty thefts, frauds, and offences against property in cases where the amount of the object of the offence or damage occasioned does not exceed $5, with the exception of those misdemeanors comprised in article 538 of the criminal code, which are within the competency of the district court.

Third.—Assaults, when the healing of wounds caused thereby shall have been completed within fifteen days.[2]

The mayor's courts were retained, but the powers of the mayor radically changed. The military governor, in a special order, formulated a series of municipal ordinances to be enforced in all the towns of the island,[3] and the mayor's court was given jurisdiction over all violations of these ordinances.

This system, probably the best that could be devised

[1] General Orders, No. 118, series 1899, paragraph 26.

[2] General Orders, No. 118, paragraph 25.

[3] General Orders, No. 195, series 1899, and General Orders, Nos. 52, 58, and 72, series 1900.

at the time, soon showed grave defects, both in organization and in operation. The power granted to the mayor's courts led to serious abuses, particularly during the period immediately preceding the Insular elections of 1900. It was charged, and justly so, that the mayors were using this power to persecute those of opposite political faith. In fact, much of the bitterness engendered during the election was directly traceable to the arbitrary use of this power. The fact that there was no appeal from the decision of the mayor tended to aggravate the feeling of discontent and gave rise to a general demand for the abolition of the mayor's court.

Under the system inherited from Spain and continued by the military governor, the judges of the municipal court were elected by the voters of the towns and received no salary, being dependent entirely upon fees. This system led to the undermining of the confidence of the people in the minor judiciary. In this respect Porto Rico repeated the experience of every country which has made the judiciary or any branch thereof dependent upon fees for its existence. Complaints of abuses were numerous throughout the island, and in certain communities there existed a settled conviction that justice was not dispensed with rigid impartiality. The danger was in some respects greater in

riminal than in civil cases, for the municipal courts ere intrusted with the preliminary examination whenver the offence was of sufficient gravity to bring the ase within the jurisdiction of the district court. For hese examinations the judges received no compensaion, a fact which led to hasty and incomplete invesigations, resulting either in serious injustice to the accused or in a lack of due regard for the interests of the community.

The popular clamor against the mayor's courts led the Legislative Assembly of the island at its first session, in December, 1900,[1] to abolish the mayor's jurisdiction over violations of local ordinances and to place this power in the hands of special police justices elected by the people. While this step marked a great improvement in the operation of the judicial system, it was soon found that the resources of the municipalities would not permit of two local tribunals. To support them adequately would have entailed too heavy a burden upon the Insular treasury.

The code of criminal procedure adopted by the Legislative Assembly at its second session, in January, 1902, contained a provision merging the police courts with the municipal courts and providing for the appointment of justices of the peace in each munic-

[1] Act of January 31, 1901.

ipality. In the two larger towns of San Juan an Ponce the salary of the justices is fixed at one hundre dollars per month, payable out of the local treasur In all other towns the salary is fifty dollars per mont The jurisdiction of the justice's court includes all mi demeanors for which the fine that may be impos does not exceed $250, or for which the imprisonme cannot exceed six months. They also have jurisd tion over violations of municipal and police ordinanc all cases of petty larceny, of breaches of the pea riots, and routs.

To complete the description of the judicial syst some mention must be made of the United States D trict Court, established by the Organic Act of April 1 1900. This court is given jurisdiction over all ca that would come before district and circuit courts the United States. As a distinctively American t bunal it has done much to acquaint the native po lation, especially the lawyers, with the procedure American courts. From the beginning it made use the jury and in this respect has proved a model for Insular courts in the introduction of this system.

It will be seen from this summary that the judi system of the island has been completely reorgani since American occupation. The final step was tal

y the Legislative Assembly in March, 1903, when ıe appellate powers of the Insular Supreme Court 'ere enlarged. Until the passage of the Act of March 2, 1903, it occupied the position of a court of cassation ıther than a court of appeals, with no power to amend, ıodify, or reverse the judgment of the lower courts ıcept as to the questions certified to it.

The new law specifically provides that the Supreme 'ourt of Porto Rico shall be a court of appeals, and not court of cassation. The court is no longer to be con- ıed to errors in procedure or of law only, as they are ɔinted out or alleged by the respective parties to the ıit, but may take cognizance of all facts and pro- ɛedings in the case as they appear in the record. This ıange not only broadens the basis of appeal but also ves the Supreme Court a position of far greater im- ɔrtance in shaping the jurisprudence of the island. he high legal attainments of the present members of ıe court are sufficient guarantee that these enlarged ɔwers will give the legal system of the country the ɛfiniteness and stability which it now lacks.

CHAPTER XIII

THE INTRODUCTION OF TRIAL BY JURY

GNEIST, in one of his admirable essays on criminal procedure, says: "A sense of justice is not native to any people; it must be acquired through the accumulated influence of custom and long-continued training."[1] This is but another way of saying that the basis of all institutional life is in the mental and moral qualities of the population rather than in written enactments. Magna Charta would never have served its purpose in English history had it not been for the character of the men who were struggling to curb the power of the Crown. Out of the struggles between the Commons and the nobility, there developed that feeling of popular responsibility for the maintenance of order which is at the root of the judicial system of England, and which has given to trial by jury a dominant place in her judicial procedure.

Viewed, therefore, in its true light, as the result of a long and unbroken political development, trial by jury

[1] Fragen der Deutschen Strafprozessordnung, Berlin, 1874.

ıst be judged with reference to the character of the pulation, rather than as an inherent right or even as ıecessary part of a system of civil liberty.

3y the mass of the Porto Rican population the right rial by jury and the complete autonomy of the munic-lities were regarded as the two indispensable accom-ıiments of American rule. In fact, there seemed be a very general belief that with the transference sovereignty these changes would be effected auto-tically, with no further requirement than the asser-ı of right by the individual. It is not surprising, refore, that the first act of the Legislative Assembly, ich met on December 3, 1900, was to draft a general :laration establishing trial by jury in Porto Rico in criminal cases involving the death penalty, or con-ːment for two years or more in any penal institution :he island. This Act was approved by the Governor ıuary 12, 1901, and was soon followed by a General ·y Procedure Act, which received the executive sig-:ure on January 31 of the same year. Both Acts nt into effect on April 1, 1901.

This sudden introduction of a system of criminal ıcedure totally different from anything that had :viously existed in the island was viewed with much ıcern by the more conservative elements of the popu-

lation. The Spanish government had persistently refused to extend trial by jury to the colonial provinces, on the ground that the experiments with the system in the mother country had been most unsatisfactory. Spanish statesmen were mindful of the fact that the jury system involved the participation of the native element in public affairs, and on this ground also should be discouraged. In fact, throughout the period of Spanish rule the government had impressed upon the native population the doctrine that their duty was obedience to the home government, and that it was the province of the representatives of the Crown to see to the maintenance of order and secure respect for the law. This policy was largely responsible for the tendency of the native population to regard itself as privileged to do everything that was not forbidden by the government, and to feel no responsibility to co-operate with the government for the advancement of the public welfare. This feeling alone was sufficient to make the working of a jury system extremely difficult, to which must be added a number of other unfortunate results of Spanish domination which justified the misgivings of the more conservative natives.

In the first place, the inquisitorial system which characterizes Spanish criminal procedure, and espe-

lly the plan of using the testimony of a witness as a ans of incriminating him, has seriously diminished gravity of the oath in Porto Rico, and thus indirectly akened the feeling of responsibility of the juror. To s there is added the fear, bred of long experience, at the governmental authority may be used as a ans of personal persecution. So deeply rooted was is suspicion that the complete demonstration of a ntrary design by the American officials was not suffint to counteract the accumulated effects of centuries misrule. Such an attitude of solidarity against govnmental oppression was a serious obstacle to the pular administration of justice, tending as it did to oduce a reluctance to convict, which is particularly ngerous in a country in which certain classes of fences require stern repression.

This reluctance of the juror to pronounce for conction is increased by the clannish feeling which still evails in many sections of the island, arraying comunities against one another or giving rise to irreconlable dissensions within the community. The risk volved to the members of a jury who pronounce for nviction is considerable. This is especially true of e smaller towns in the interior, which are often domited by one family. In one town where I had occa-

sion to stay for some time, a single family so dominated the situation that any reflection on one of its members was visited with summary punishment. Under such conditions the natural timidity of the population makes it impossible to secure a free expression of opinion from those who may be drawn as jurors.

Although the jury law went into effect on April 1, 1901, its actual enforcement was delayed for a considerable period. In the first place, the Act did not make trial by jury compulsory, but gave the accused the right to elect such trial. If such request was not made at least two days before the day set for the trial the accused was deemed to have waived the right. This gave the native bar considerable influence in determining the extent to which trial by jury should be used. Owing to the novelty of the system, and to the fact that it meant embarking upon a procedure with which they were unacquainted, the native lawyers showed a marked disinclination to its use. It was also found that the law could not be enforced until further rules of procedure had been formulated and until the judges had sufficient opportunity to familiarize themselves with these rules.

During the first seven months of the operation of the law not a single jury trial was held, and there were but

n requests for such trials pending. Attorney-General arlan in his report for the year ending September 30, 902, calls attention to the fact that the district courts of e island disposed of 3,180 criminal matters of all nds, in a large number of which the persons accused d the right under the law to demand a jury trial, but .t only seventeen such trials were held. From ptember, 1901, to September, 1902, there was but one al by jury in the district court of San Juan. " In the strict Court of Arecibo," says the Attorney-General, no jury trial was held. The district court at Ponce ld four jury trials. In two cases, one for homicide d one for criminal libel, verdicts of guilty were ren-red. In the district court of Humacao there were so four jury trials. Of these only one resulted in tablishing the guilt of the defendant. During the me year there were eight such trials in the district urts of Mayaguez. In four of these cases verdicts of ilty were found and four of them resulted in ac-ittal." [1] That there is a growing tendency to make e of the system in certain districts where convictions ve been relatively infrequent is attested by the more ent records. During the month of October, 1902, rty jury cases were heard in the district court of

[1] Report of Attorney-General Harlan, 1902.

Mayaguez, and of these only eleven resulted in c
victions. In fact, the Attorney-General points
that "in the total number of forty-seven jury cases t
since the Jury Procedure Act went into effect there h
been but eighteen verdicts of guilty. The percen
of acquittals is large and is suggestive as the pos
explanation of the sudden popularity of the jury
in the jurisdiction of Mayaguez."[1]

An examination of the reports of these cases disc
the fact that the most serious difficulty in the con
of the trials has been the absence of a law of evid
The complex system of evidence rules characte
of the English common law is directly traceable t
jury system. In spite of the many refinements of
soning which at times seem to hinder rather tha
promote justice, the procedure is, on the whole,
adapted to protect the accused and to keep the
issue before the jury. Its purpose is to avoid
fusing the mind of an untrained juror. In a cou
however, where the bench is judge of both law
fact there is no necessity for such extreme ca
excluding irrelevant or hearsay testimony. In
circumstances it is assumed that the highly tr
talent on the bench will be able to exercise discrin

[1] Cf. Report of Attorney-General.

g care in giving to different classes of evidence their
le weight.

A final judgment as to the success or failure of jury
als in Porto Rico must be postponed until the judges
emselves have become thoroughly acquainted with
e working of the system and are able to direct the
oceedings with ease and assurance. But even after
s difficulty is solved there will always remain the fact
at in Porto Rico we are dealing with a population
ose civic training is by no means favorable to the
ccessful working of the system.

CHAPTER XIV

THE CIVIL SERVICE

In planning a civil service system adapted to the peculiarities of any local situation, it is always advisable to separate its two parts—the method of selection on the one hand, and the means of securing stability within the service, on the other. It is sometimes taken for granted that the application of the merit system in recruitment is the only end of civil service reform and it must be admitted that the emphasis has been laid largely on this factor. But the leaders of the movement for civil service reform have clearly seen that the indirect influence of the merit system in recruitment is even more important than its direct effects. As soon as entry into the service can be accomplished only through compliance with certain definite tests and standards, the incentive to the politician to bring personal influence to bear in the matter of appointments is removed. The wider the range of choice of the appointing officer the greater the temptation to exert the full weight of personal influence and political

favoritism. There is, therefore, a close relation between the method of recruitment and the stability of the service not to be lost sight of in any discussion of the question. For instance, in all the States in which the system has been given fair trial, the certification of only one or two names from the eligible list has unquestionably tended to reduce the temptation to remove competent officials in order to make way for favorites. The mere fact that such removal does not open the way for the appointment of personal friends is sufficient to discourage unfair treatment within the service.

In spite of the difficulties in the application of the competitive system in its most advanced form to the Porto Rican situation, its acceptance is justified by its indirect effect upon the service. In presenting these difficulties the purpose is not to discourage its adoption, but rather to emphasize the fact that these difficulties should not be ignored.

The single and consistent aim of the civil service reform movement has been to secure the highest efficiency in the public service. It has been by the persistent emphasis of this great purpose that definite results have been accomplished. We must not lose sight of the fact, however, that the means of securing

the highest efficiency under conditions such as prevail in the States of the Union are not necessarily identical in all details with the means best adapted to securing the same results under such exceptional conditions as prevail in Porto Rico, where two peoples with different political traditions, with a different point of view, and speaking a different language are brought into contact with one another. It may not be possible in the early stages to meet the requirements of an advanced civil service system. Conditions may even present themselves under which administrative efficiency must, to a certain degree, be subordinated to a more important end. For instance, the fact that in our new possessions we must secure the active support of the native population, involves a relative lowering of efficiency. This is not due to any inherent defect in the native, nor does it necessarily involve any reflection upon his ability, but is simply a recognition of the fact that he has not been trained to participation in public affairs.

We must, therefore, in the early stages of the civil service in Porto Rico, keep constantly in mind that an exceptional situation requires exceptional treatment. To treat the Porto Rican situation as exactly similar to that in the States would be to rob our conclusions of any

permanent value. It is a mistake, however, to suppose that the peculiarities of the civil service in Porto Rico are due to the fact that it is newly acquired territory, or even to the circumstance that the conditions are more primitive there than in the States of the Union. Such arguments were used, and with telling effect, as a ground for postponing the consideration of the civil service bill presented at the last session of the Legislative Assembly. "It is all very well," it was said, "to have a civil service based upon the competitive system in a highly organized community such as Massachusetts, New York, or Pennsylvania, but Porto Rico is unprepared for any such complex organization." As a matter of fact, the simpler the administrative organization the more readily can the competitive system be introduced. But the belief that a civil service law involves an undue increase in complexity of organization has taken so strong a hold, even upon those who are sincerely interested in securing the most efficient plan of organization, as to constitute a real obstacle to progress.

The measure proposed to the Legislative Assembly at its first session provided for a civil service commissioner, to be appointed by the Governor, whose duty it was to keep the records of all examinations held by

him or under his authority, of all applications and recommendations of applicants for office, and of all appointments, promotions, and discharges from the classified civil service. He was also required to prepare a roster of the officials and employees in the classified service of Porto Rico, and in its cities, villages, and other civil divisions, which should show in connection with each name, the date of appointment, employment, promotion, or reinstatement of the official or employee, his compensation, the date of the commencement of his service, the date of his transfer, if such had taken place, and the date of his separation from the service and the reasons therefor. The bill provided for a classified and unclassified service, and enumerated minutely the offices included in the latter. At the time of the formulation of the measure it was felt that a wide range of choice would have to be given to the heads of executive departments, and for this reason the commissioner was required to certify the entire eligible list.

Looking back upon the situation from the viewpoint of the present, it is clear that this provision went beyond the necessities of the situation. The indirect effects of certification of the entire eligible list are such as to make the operation of the system extremely hazardous. The temptation constantly to lower the standard of

the examinations and the increased possibility of substituting personal favorites for efficient incumbents, are considerations which must be given great weight in the determination of this question. All the requirements for flexibility would be met if the first three names of the eligible list were certified.

In the formulation of other provisions of the civil service law there are at least two circumstances which distinguish Porto Rico and the other recently acquired territory from any previous acquisitions, and which give the civil service system a different character from that with which we have heretofore had to deal.

There is, in the first place, the difference in language, training, and tradition, from which there develops inevitably a certain feeling of distrust between the native and the American elements. Much of this is traceable to misunderstandings which will disappear in the course of time. During the early years of American occupation the lack of mutual confidence entered as an important factor. At first glance it would seem that this difficulty is due entirely to the difference in language, but a more careful study of the situation shows that it has deeper root. In the close co-operation required in any administrative department, all the more subtle national differences become causes of fric-

tion. They are very real obstacles to the development of that *esprit de corps* and unity of departmental spirit, which contribute so much toward administrative efficiency.

It must not be supposed that this lack of complete harmony was due to a distrust shown toward the American element by the native population. The situation was rather reversed. With the exception of a few of the higher officials, lack of confidence in native ability and native integrity characterized the attitude of the Americans resident in the island. It is an interesting fact, not without its significance in our contact with new peoples, that the natural disposition of the American toward the foreigner is one of distrust mingled with contempt. The presumption is against the ability of the foreigner to perform efficient service.

Impatience of the methods of a people untrained to participation in public affairs is a constant source of irritation, and unless kept in check by the foresight and prudence of those who are directing public affairs, becomes a cause of serious disturbance. Although the difficulties presented by this question of the relation between the two peoples are by no means inconsiderable, the immediate dangers have been counteracted to a very large extent by the determination of the

vernor and his advisers to assure to the native ele-
nt a fair and equal opportunity, whether in the
blic service or in other fields of activity.

A far more serious problem is presented by those
its of the native population which have a direct
aring on the organization of the civil service, and
ich we cannot hope to change radically except by
e slow process of education and example. The first
these to demand consideration is the unwillingness
d seeming inability of the natives to trust one an-
her. This unfortunate condition is due in part to
e unfair discrimination to which they were subjected
der Spanish rule, and in part to the fact that during
anish times they constantly saw before them the em-
yment of the public service for personal ends. We
not always fully appreciate to what extent the spirit
mutual confidence is at the basis of our political
well as of our industrial life. The moment the
sumption in the public mind is against the honesty
d fair dealing of public officials, a spirit of antago-
m is aroused which seriously interferes with the
ministration of law. To those who were in Porto
co during the first years of American rule the lack
mutual confidence was one of the most discouraging
tures of the situation. This fact has a direct bear-

ing on the mode of selection for the public service, and especially upon the applicability of the competitive system.

Under Spanish rule the island possessed a civil service system based upon the competitive principle, and competitive examinations governed a very much wider class of offices than in our own federal or state systems. Notaries, recorders of deeds, district attorneys, and clerks of the courts were appointed under a system of grading based upon competitive examination. In the actual administration, however, the native Porto Ricans were to a large extent excluded, the offices being reserved for the peninsular Spaniards. As a consequence the native population felt a certain distrust of the competitive system as involving quite the same possibility of discrimination as direct appointment without restrictions. A far more serious consequence has been to deprive the natives of that readiness in dealing with administrative matters which comes from continued contact with public affairs and is so essential to an efficient civil service. We are apt to forget that in the discussions of our political clubs and other associations, in the political activity of our local governments, and in the acquaintance with public affairs which the newspapers and other agencies give every

er, we have in this country a training school for the il service which no fixed curriculum of study can lace.

In applying the competitive system to Porto Rico, other fact must be taken into consideration which has lirect bearing on the efficiency of the examination t. The education of the Porto Rican has been, to a y large extent, a training of the memory. Under anish rule the school text-books were principally mpilations of questions and answers, which de- anded of the pupil an unremitting exercise of the emory. The astonishing ease with which the Porto can is now able to prepare for examination tests quiring a knowledge of facts alone, can only be plained by reference to the system of education under ich the present generation has been trained. For- iately, the diversification of tests which has been complished under the direction of the United States vil Service Commission has made it possible to over- ne many of these difficulties. We are now able so adjust examinations as to test the candidate's aptability and judgment as well as his memory.

Under these exceptional conditions the development an efficient administrative system was no easy task. ie establishment of civil rule found the government

confronted with the problem of enlisting the co-operation of a native population untrained to participation in public affairs and with an inborn distrust of any plan based upon the competitive test. It was necessary to devise an administrative organization which would not only fulfil the requirement of efficiency, but which would command the active support of the native element. Those who were directing affairs in Washington, as well as the officials delegated to administer civil government in Porto Rico, were keenly alive to the fact that our administration of this new dependency must prove a failure unless the support of the native element was secured. This end had to be attained even at the cost of a temporary sacrifice of efficiency. Although during the early period of civil rule few natives were employed, except in the most subordinate positions, the heads of departments soon inaugurated the policy of increasing the number of native incumbents.

But here a new difficulty presented itself which could not have been foreseen. As already pointed out, the Porto Ricans, during Spanish domination, were systematically removed from participation in public affairs. The complete change of policy which marked the inauguration of American sovereignty caused the native element to throw itself into political life with an incred-

egree of enthusiasm. Politics suddenly acquired portance out of all proportion to other public cial interests. Political belief became a kind of n, and combined with it was all the hatred and ance of fanaticism. The use of the term "*co-nario*," which is the Spanish equivalent for ership in the same party, has a deep signifi- in the political life of the island. Party affilia- nean a far closer personal relationship than they his country, just as party differences mean a far personal estrangement. During the first elect- mpaign under American rule, differences in al belief divided families, arrayed sections of nities against each other, and gave rise to feuds n the towns.

evident that such a situation must react upon il service system. If differences in political be- eed violent personal antagonisms, there is not ne danger of dissension within the service, but greater peril of favoritism and discrimination enforcement of law.

a matter of sincere congratulation that the high ter of the men intrusted with the direction of affairs makes it possible to give them wide dis- ary power without danger to the efficiency of the

service. In fact, the principal advantage of a civil service law in Porto Rico under present conditions will be to relieve the heads of departments of the importunities of office-seekers, and thus enable them to give their undivided attention to the pressing duties of their departments. As long as the present care and discrimination in selecting government employees are exercised, it is doubtful whether any competitive system could raise the standard of the service. Its principal effect would be to give to the public administration greater stability and to the incumbents in office an assurance of tenure which would undoubtedly help to make the public service a career rather than an incident. A certain degree of discretionary power which, under any system, should be left to the heads of departments, is furthermore dictated by the fact that the Insular executive departments are comparatively small. In most cases the head of the department can exercise a personal supervision over his subordinates and can so test individual efficiency as to eliminate the incompetent with comparative ease.

In the discussions of the civil service in our new possessions attention has been directed almost exclusively to the Insular government; the municipalities and other local divisions have been totally neglected. It is the

neral feeling in Porto Rico that the local civil service n only be taken up after the Insular service has been oroughly organized. My own observation leads me a different conclusion. The municipalities are in r greater need of a civil service law than is the cen- al government, and this is especially true of the four rger towns, San Juan, Ponce, Mayaguez, and Huma- o. The Insular administration is in a more satis- ctory condition than the civil service of most of the tates of the Union, whereas local government in Porto ico is costly and inefficient. This is due mainly to total ignorance of the most elementary principles of dministrative organization. The examination of the ooks of some thirty municipalities has convinced me hat the first thing required in every town in Porto Rico s a trained accountant. The need of trained men in very other branch of the service makes local govern- ent the most fruitful field for the introduction of the erit system.

Furthermore, the local administration is in the hands f the native element and, with the extreme antago- isms of party feeling, the dangers of partisanship are r greater than they are in the Insular government. he fact that the local administrative system is more rimitive than the Insular makes the necessity of such

a law all the greater. As has already been pointed out, it is a mistake to suppose that the civil service law is only adapted to an advanced and highly developed organization. Local administration in Porto Rico is the weakest and most vulnerable point in the political system of the island. It is there that the greatest need for a test of mimimum efficiency is required, and it is there that the greatest danger from partisanship in appointments and partisanship in removals is to be found.

With a well-organized local civil service it will be possible greatly to diminish the degree of central control over local authorities and thus increase the measure of local self-government which these localities may enjoy. At present the inexperience of local officials, combined with the constant danger of partisanship in local administration, makes it necessary for the central government to maintain a far-reaching administrative control over the municipalities. An improvement in the grade of local officials would enable the Insular authorities to expect a higher standard of service, and thus diminish one of the causes of central interference. We have here but another instance of the comprehensive effects of a well-organized civil service. Upon it depends very largely the possibility of trans-

lanting to our new possessions the principle of local elf-government.

Although the Legislative Assembly was not able to gree upon a civil service law, a step toward the in- uguration of the merit system was taken by the appoint- nent of a special committee of the Executive Council, o which was intrusted the task of drawing up a plan. This committee is still holding the matter under advise- nent. Its powers are sufficiently broad not only to formulate the rules, but to put them in operation, and it is likely that the next year will witness further devel- opment in this direction.

CHAPTER XV

POLITICAL RETROSPECT AND PROSPECT

MOST of the problems connected with the gov ment of our new possessions resolve themselves the question whether, after the conclusion of the pe of reconstruction and reorganization through w they are now passing, it will be possible to hand to the inhabitants complete control of their own aff There is no lack of desire on their part to try experiment. Every party convention that has held in Porto Rico since the change of sovereignty in some form or other declared against the pre form of government. At times, as in the recent vention of the Republican party, the protest was dire against the appointive Upper House. Other express of dissatisfaction have been even more emphatic. Federal Party has inserted in its platform a request the repeal of the Foraker Act, and has made for demand upon Congress for the same organization the other territories of the United States. The an tions of both political parties extend even beyond

granting of territorial status, and contemplate the admission of Porto Rico as a State of the Union.

This demand for territorial status will become steadily more insistent as the competition between the political parties for popular favor grows more keen. Continued refusal to concede this point is likely to be accompanied by increasing discontent, which may ultimately culminate in serious difficulties for those intrusted with the executive direction of Insular affairs. The advisability of giving to Porto Rico the same status as the other organized territories of the United States, will depend upon our view of the political capacity of the people. The elements for practical judgment on these questions are so elusive, and depend on so many intangible factors that no two observers are likely to arrive at the same conclusions. The most direct material will be found in a study of the development of the political parties in Porto Rico, for in the activities of these parties we find mirrored the effects of Spanish rule, as well as the aspirations of the people toward a political system as popular in form and operation as that of the United States.

It has long been one of the accepted principles of political science that the growth of political parties reflects the constantly changing relations of class and

industrial interests. In England, for instance, we trace the growth of the Liberal Party to the rise of the middle classes, consequent upon the industrial development of the early decades of the nineteenth century; in Prussia the strength of the Conservative Party is directly traceable to the power of the landed proprietors of the northern provinces. In a word, the relation between the industrial and social development of a people and the principles of its political parties, seems so direct as to be almost self-evident. The formulation of political doctrines in party platforms becomes, therefore, the concrete expression of economic interests and political ideals.

While this organic relation can readily be established under normal conditions, it is subject to important limitations when normal development is broken. The old lines of demarcation disappear; new interests, new aspirations, and new ideals break down party divisions. The sudden disappearance of traditional antagonisms takes from political parties much of their reason for existence, and in the confusion and uncertainty which result, the new organizations, rising from the ruins of the old, fail to give accurate expression to class and sectional demands.

It would be difficult to find a more striking illustration

of these principles than is offered by the history of political parties in Porto Rico. The sudden change of sovereignty, together with the new political and industrial opportunities afforded by American rule, introduced an element of uncertainty into the traditional habits of thought of the people and obscured, for a time at least, the real community of interests of the more progressive elements. It is not surprising, therefore, that the political combinations effected during the first years of American rule give evidence of incongruities in their make-up and inconsistencies in their attitude toward great public questions, indicative of a lack of adjustment to the new conditions.

The growth of party activity since American occupation can best be explained by reference to the conditions existing during the latter years of Spanish domination. The Spanish Government consistently pursued the policy of discouraging political activity in the native population. In fact, all forms of association and organization were regarded with suspicion because of the fear of secret political agitation. This has been, in some respects, one of the greatest misfortunes of the Porto Rican people, for it has prevented the free development of that spirit of association and co-operation so necessary to a healthful political life. The summary

punishment inflicted upon the few who incurred the displeasure of the authorities, served effectively to check any open manifestations of disaffection. The Spanish government could, furthermore, count upon the unquestioned support of the native Spaniards resident in the island. The fact that the bulk of the trade and commerce was in their hands, and that they had secured a hold upon the native planters through the mortgaging of estates, made it a comparatively simple task to suppress any tendencies toward political organization.

The extreme administrative centralization of the Spanish system also contributed toward this end. Little opportunity was given the people of the island, even in their local governments, to participate in the management of their own affairs. The mayors of the *municipios* or towns, were in fact, if not in law, appointed by the central government. The local councils were subservient to its authority, and even after the system of elective councils had been introduced, the elections were so conducted as to assure the supremacy of the agents of the government.

But in spite of all these precautions, and perhaps largely because of them, a number of secret societies were organized, ostensibly for social purposes, but in reality with political aims. Owing to the vigilance of

e authorities, it was impossible for these societies to quire great power, but they served, nevertheless, keep alive the spirit of discontent, as well as to rengthen the desire for greater autonomy in local fairs.

The ease with which Porto Rico was governed stands marked contrast with conditions in Cuba, where fairs rapidly went from bad to worse. From 1850, volutions followed each other almost without interval, ining in strength as the repressive measures became ore severe. The futility of attempting to govern the and without reference to local opinion was gradually rcing itself upon the political leaders in Spain. The sturbed condition of Cuba made it seem all the more sirable to keep Porto Rico free from disaffection, and e extreme measures used to repress the Cuban up- ing served to strengthen the disposition to meet the mands of the Porto Rican people in a spirit of con- iation. Although the desire for independence never quired the dignity of a great popular agitation, the ovement for local autonomy gave evidence of con- lerable strength. The changed attitude of the home vernment was first shown in the reforms instituted 1897 by Canovas del Castillo, which were intended give greater powers of local self-government to the

towns. The Spanish Liberal party, under the leadership of Sagasta, fearing that this concession might draw from them the support of the Porto Rican Liberals and Autonomists, called a conference to which a delegation from Porto Rico was invited. At this conference the autonomic system was agreed upon, and in return the native Autonomist party agreed to give its support to the Liberal party in Spain. The new plan was put into operation in Porto Rico in 1898, but the period of harmonious co-operation thus apparently inaugurated was destined to be of short duration. The return of the Porto Rican delegation from Madrid marked the beginning of a factional controversy which caused a new distribution of political forces.

The agreement with the Liberal party in Spain was looked upon with considerable suspicion, especially by the poorer classes. There existed in the more radical element of the native population a feeling that the compact with the Spanish Ministry was a compact with tyranny, and that the work of the Porto Rican delegates was a betrayal of the interests of the island. This radical sentiment did not, however, take the form of definite political organization; in fact, events moved so rapidly that little time was given for opinion to crystallize.

The autonomic system went into operation on the eleventh of February, 1898. It provided for a governor-general appointed by the Spanish Crown, who was made commander-in-chief of the land and naval forces. His civil power was subject to the direction and control of an Insular Cabinet, which included a president and secretary of the treasury, a secretary of government and justice, a secretary of education, a secretary of public works, and a secretary of agriculture. The legislative authority was vested in a representative assembly, which was given control over the local budget and other powers of legislation in local matters, subject to the supervision of the central government in Madrid. Local government was organized on a most liberal plan, with universal suffrage for males over twenty-five years of age.

During the period immediately preceding the institution of the new system, party lines became more clearly defined. The pro-Spanish party was in the field with a well-developed organization and commanded a large share of the available patronage. The Opportunists ranked second in importance, and represented the followers of the delegation that had entered into the agreement with Sagasta. They were, in a sense, "opportunist-autonomists," who accepted the

concessions of the Spanish government as the best obtainable under the circumstances. The more extreme Autonomists, who were known as the "Pure Autonomists," were not satisfied with the Sagasta reforms and insisted upon a more complete autonomic system. What was known as the Liberal party corresponded very closely to the Opportunist, except that with the Liberals the native element was predominant, whereas among the Opportunists there was a considerable representation of the Spanish population. The new government was organized with representatives of the Autonomist, Opportunist, and Liberal parties, but dissensions soon arose in the Insular Cabinet, owing to charges of corrupt practices at the first elections under the new system, and, as a result, the Autonomists retired, leaving the Sagasta Liberals in control. At the head of the new government, and occupying the position of president of the council, was Luis Muñoz-Rivera, who afterward became the leader of the Federal party.

It was with this government in operation, and this party in power, that the American military commander had to deal in October, 1898. The Spanish autonomic system was not formally abolished until February, 1899. General Henry then ordered that the Council

Secretaries be discontinued and that four new secreryships be established, a secretary of state, of the easury, of justice, and of the interior. Three of these ositions were given to Sagasta Liberals and one to a ember of the Autonomist Party.

The first test of strength between these parties ame with the municipal elections of November, 1899. he American military government, in its endeavor o bring the population into closer contact with public ffairs, determined to make the first test of the political apacity of the people in the election of local officers. It was in the preparation for these elections that the w parties, which had been struggling for supremacy ace the change of sovereignty, received definite form. this reorganization the old Spanish Party was cometely eliminated, as its members were excluded from rticipation in public affairs by virtue of their nationity. The Autonomist party, having lost its reason r existence, was dissolved and reorganized as the epublican party. In a broad, general way it may be aid that a relationship of lineal descent exists between he Autonomist and Republican parties, traceable to he fact that both appealed to the more radical element n the native population, but the tie is not so close as night seem at first glance, inasmuch as the Republican

party was organized with a view to bring to its support the elements hitherto neglected—the poorer whites and the negroes. The purpose which the Republican leaders have consistently followed is to make it the popular party of the island, and in this effort they have achieved conspicuous success.

The Liberal party was also reorganized, and under the name "Federal Party" attracted the larger property-holding interests and the merchants. To it belong the more conservative elements of the Porto Rican population. Its greatest weakness, however, lies in the Bourbon tendencies of its members. Their horror of negro domination, coupled with the fear of the results of a further extension of the suffrage to the poorer whites, has largely determined their attitude toward public affairs. They welcome American rule, but look with considerable misgiving upon the probable effects of American democratic ideas on the institutions of the island.

There is no marked difference between the platforms of the two parties. They vie with each other in expressions of attachment to American principles and American institutions; both advocate a territorial form of government for Porto Rico, a reorganization of the system of taxation, and a system of currency

cal with that of the United States. One differ-
of considerable significance, however, is the fact
he Federal party does not express itself clearly
suffrage question, whereas the Republican party
not hesitate to define its position. One of the
nent planks of the Republican platform reads
lows: "We affirm our devotion to the national
tution and the autonomy reserved to our country
nder; to the personal rights and liberties of all
izens of our country, and especially to the supreme
vereign right of every lawful citizen, rich or poor,
or foreign born, to cast one free ballot in public
ns, and to have that ballot duly counted. We
he free and honest popular ballot and the just and
representation of all the people to be the founda-
our republican government, and demand effective
tion to secure the integrity and purity of elections,
are the fountains of all public authority."
municipal elections of November, 1899, were
nder the supervision of the military authorities
esulted in the victory of the Federals. There
indications, however, of the growing strength
more popular Republican party. The large
ity secured by the Federals blinded the leaders
necessity of unremitting activity in maintaining

and extending the party organization. The Republican leaders, some of whom had been educated in the United States, were fully aware of the value of thorough organization, and during the period between November, 1899, and the first elections under civil government in November, 1900, they were engaged in strengthening their position in every part of the island. The leaders were impressing upon the people the fact that the dominance of the Federals meant the perpetuation of Spanish traditions, that the Federals gave no thought to the interests of the mass of the population, and that democratic rule could not prevail in Porto Rico until the Republican party came into power.

This period of political agitation proved too severe a strain on the system of secretaryships instituted by General Henry. Internal dissensions impaired its usefulness, and even threatened to destroy it, and led the military governor to abolish the system and substitute therefor a series of boards. This took from the Liberal, or as it was now known, the Federal party, one of its main sources of strength—its power with the Insular government at San Juan. It meant a definite break of the Liberal leaders with the military government. Their wounded pride at being thus summarily thrust from power soon found expression in newspaper attacks

on the military commanders and in criticism of American rule. As these utterances grew more and more violent, it became evident that the Federals were gradually placing themselves in a position which might readily be construed as one of opposition to American institutions. This they were anxious to avoid, and, therefore, directed their energies to securing the establishment of civil rule, hoping thereby to regain their power.

It is only natural that the break of the Federal party with the military government influenced their attitude toward the civil régime established by the Foraker Act, and that the leaders were unable to approach the new government in that spirit of co-operation which the best interests of the party demanded. The Republican leaders, on the other hand, brought to the new system a free and ready acceptance of everything distinctly American, and a willingness to aid the American officials in the great work of civic reorganization. The desire on the part of Governor Allen and his associates to remain aloof from party conflicts was construed by the Federal leaders as an indication of unwillingness to give them proper recognition. This led to a further straining of relations, and finally resulted in open rupture. The events leading up to this break

are of special interest, as they illustrate with gr clearness the attitude of the party toward the gove ment.

The dissatisfaction of the Federal leaders, grow out of the gradual decline of their power and influe reached its climax when the Executive Cou began the work of districting the island for the e tions of November, 1900. Article twenty-eight of Foraker Act provides that, for the purpose of elec delegates to the Lower House of the Legislative Ass bly, the island be divided into seven districts, from of which five delegates are to be chosen. The tas determining the boundaries of the electoral divis was assigned to the Executive Council. In orde avoid any possible criticism of the attitude of American members and at the same time to imp upon the native members the full responsibilities o situation, the five Porto Rican members were appoi a committee to draw up a plan for the districtin the island. This committee contained two Fede two Republicans, and one Independent. It was apparent that each party would have its own geogr ical plan. The final acceptance of a plan prep by the independent member led to the first def break of the Federal party with the Administra

The charge was made that the island had been "gerrymandered" in order to secure a Republican majority, and Muñoz-Rivera immediately ordered the Federals to withdraw from the elections.

The campaign period was marked by bitter denunciations of the Administration in the Federal newspapers, which at times degenerated into personal attacks upon the Governor, and even upon the President of the United States. The result of the election was a Lower House unanimously Republican. The order of the Federal leaders to their followers to withdraw from the elections was so generally followed that the Federal party cast but 148 out of the total of 58,515 votes. The total registration was 123,140.

Although at the time, this withdrawal of some of the best elements of the population from political life seemed unfortunate, it produced quite a different effect from the one anticipated by the Federal leaders. They had hoped that so drastic a measure would lead the Administration to make overtures with a view to restoring harmony. It did not occur to them that the position they had taken placed them at the mercy of the Republican party. Governor Allen and his associates took the view that the Federal party, in withdrawing from public affairs, was evading a great public

duty, and was, therefore, to be treated as politically non-existent. The government at Washington looked upon this display of party wrath as an indication of the inability of the native population to manage its own affairs. From every point of view, therefore, the action of the Federals worked great injury to the party.

Upon the withdrawal of the Federal members from the Executive Council, President McKinley promptly appointed two Republicans. Thus, neither House of the Legislative Assembly contained any opponents of the Administration. While under ordinary circumstances this might have been a serious matter, it proved a real advantage during the first and second sessions of the Legislative Assembly. The work of bringing the institutions of the island into closer harmony with the American system was one which necessarily fell to the American members of the Administration. The initiative had to be taken by them, and it was necessary for the successful issue of this work that they should receive the unqualified support of a party whose faith in American institutions was born of an unquestioned faith in the principles of our government. The presence of an opposition party would have led to long and perhaps bitter wranglings which would certainly

have delayed much-needed legislation. Incidentally, the Federal party was taught a lesson which it is not apt soon to forget, viz., that active participation in the political life of the country is not only the right but the obligation of any party organization, and that this obligation cannot be disregarded with impunity.

That this lesson made a profound impression on the leaders was clearly shown at the succeeding election for members of the House of Delegates, in November, 1902. Both parties were not only anxious to enter the field, but were outbidding one another in their eagerness to assure the Administration of their support. Although the Republican party was again successful at the polls, the Federals succeeded in electing ten members of the Lower House. Of a total of 108,428 votes, the Federals polled 34,605. The presence of a vigorous minority party has had a beneficial influence upon the political life of the people. It has served the two-fold purpose of consolidating the Republican party which was threatened by disruption because of internal dissensions, and of impressing upon the leaders a far keener sense of responsibility.

It is a matter of no little difficulty to attempt a forecast of the political future of the island. The period of civil rule has been too short to demonstrate either

the political capacity of the people or their shortcomings. There are, however, certain features of the situation which demand serious attention, as they are likely to acquire considerable importance in the future.

It is usually taken for granted that the first years of American rule presented the greatest difficulties, and that those who will be called upon to conduct the administrative affairs of the island in the future need only work out in detail the general principles of public policy laid down by the pioneers. That this impression is erroneous is clear to everyone who has carefully watched the course of events in Porto Rico. The enthusiasm for American rule and American institutions contributed greatly toward the willing acceptance by the people of the measures proposed by the Governor and the heads of the executive departments. It is inevitable that this enthusiasm must soon give way to a cold and calm analysis of every proposed change. Furthermore, the awakening political consciousness of the people is likely to develop a form of political assertiveness which may seriously hamper the Executive in the work of reorganization. Each successive session of the Legislative Assembly gives evidence of an increasing desire on the part of the House of Delegates to control the acts of the Governor and

of the heads of the departments. This condition compels the Governor to lean on one of the parties for support. In exchange for its allegiance this party naturally demands recognition in the form of patronage. The Executive thus becomes involved in local party strife which subjects him not only to political attack, but to the bitter personal enmity of the members of the opposition party.

It is possible and certainly desirable that, with the growth of more definite party issues, the personal element in party politics will become less pronounced. The next ten years are likely to witness a remarkable industrial development of the island, not only in the increase of the production of sugar, but also in the extension of the coffee, tobacco, and fruit industries. These changes will have a marked effect upon the political life of the island.

The first result of the industrial advance will be to bring into the foreground a number of the definite economic issues about which party activity will be grouped. This alone will tend to diminish the purely personal influences that have hitherto determined the character of political strife. At present it is extremely difficult to distinguish between the platforms of the two parties, a circumstance which tends to rob political cam-

paigns of their educative value by concentrating attention on minor personal differences, rather than upon the great questions of public policy affecting the welfare of the island. With each advance in the development of the resources of the island the policy of the government with reference to the banking system, the system of taxation, and the means of communication becomes more important, and public discussion of these questions cannot fail to exert an educating influence on the people.

Another inevitable effect of industrial progress will be a growing consciousness of power on the part of the working classes. The movement is already apparent in the coast regions where there is greater concentration of population and where both parties are intent upon outbidding each other in their attempts to secure the support of the laboring class. Within a few years the labor vote will be an important factor in the situation. The growing spirit of organization among the laboring classes is already influencing both political parties, as is shown by the more radical clauses in the recent party platforms. Although the unrest which usually accompanies the growth of a more compact organization of labor involves some danger to the steady industrial progress of the island, the ultimate effect of the new

ovement is certain to be salutary. Porto Rico is still ffering from the fact that during more than three nturies the laboring classes were kept in a position rsely approaching serfdom. Since American occupan a new spirit, indicative of a growing consciousness power, is manifesting itself. The labor organizans have already secured a considerable increase in e wages of the plantation laborers. As yet the new ovement has not reached the coffee industry, owing ry largely to the fact that this class of labor is scated over the sparsely settled mountain regions, and at the task of effecting an organization is, therefore, r more difficult.

In spite of the fact that the first attempts at effective ganization are of recent date, the affairs of the w labor unions have been conducted in a surprisgly conservative spirit. There have been no excesses, d the only uneasiness has been caused by a fear that e Socialists would secure control of these organizans, a danger which is no longer imminent.

Another factor of no mean importance in the mainnance of the stability and orderly progress of the land is the cordial relation existing between the civil d ecclesiastical authorities. Among Latin-American countries, Porto Rico occupies an enviable and

exceptional position. The fact that under Span domination the island was ruled from Madrid, a therefore lacked a distinctive political life, remo from the church all temptation to interfere in c affairs. The way was thus paved for the comp separation of Church and State, in law as well in fact. The only problems that presented themsel were those relating to church property. The Spar government appropriated for use as public build many of the monasteries and hospitals belongin the church, granting in return an annuity. This nuity ceased with the change of sovereignty, and church found itself in the embarrassing positio forfeiting both property and annuity rights. government of the United States was precluded constitutional prohibitions from contributing to the support of the Church, a circumstance which rise to the question whether the government shoul relinquish title to the public buildings and other p erty which the church had originally ceded. Neg tions for the settlement of this question are still p ing, both parties manifesting a sincere desire to r an equitable understanding. The cordial relation w has hitherto existed between the civil and eccle tical authorities has eliminated from party strif

ns which are usually aroused by religious con-
nd which have played so important a part in
olitical instability of many of the Spanish-Amer-
ountries.

ether we view the progress of the island from an
rial, political, or social standpoint, the conditions
ngularly favorable for the successful solution of
w problems presented by our Spanish-American
sion in the Caribbean. The lessons that we are
ng will be of service to us in the larger tasks that
eforc us. Future generations will look upon
perience acquired in the administration of civil
in Porto Rico as a period of training and prepara-
or the problems involved in our relations with
anish-speaking peoples of the American continent.

APPENDIX

Changes Made by the Legislative Assembly of Porto Rico at the Session of 1904.

INTRODUCTION OF UNIVERSAL SUFFRAGE

The Act of March 10, 1904, modifies the electoral system, by providing that an educational test shall go into force on the first of July, 1906. Until that time every male citizen of Porto Rico, or of the United States, of the age of twenty-one years, who shall have resided in Porto Rico one year next preceding the date of election and for six months within the municipal district where the election is held, shall be entitled to vote.

(*To be read with page* 147.)

REVISION OF THE CODE OF CIVIL PROCEDURE

The Legislative Assembly approved of the revision of the code of civil procedure as undertaken by the Attorney-General of the Island. This revision is intended to bring the procedure in civil cases into closer harmony with the American system. No publication of this revision has yet been made.

(*To be read with page* 162.)

MODIFICATION OF THE RIGHTS OF MARRIED WOMEN

The rights of married women have been brought into closer harmony with the system prevailing in the States of the Union by an amendment to Section 160 of the Civil Code, which is made to read as follows:

"The husband and wife shall have the right to manage and freely dispose of their respective separate estates."

(*To be read with page* 169.)

AMENDMENTS TO THE REVENUE SYSTEM

The Act of March 10, 1904, provides that during the fiscal year beginning the first day of July, 1904, and in every succeeding fiscal year, unless otherwise provided by the Legislative Assembly of Porto Rico, "there shall be levied and collected by the Insular Government, for the purposes of providing insular and municipal revenue, a tax of one-fifth of one per cent. and by the municipalities a tax not exceeding four-fifths of one per cent. upon the value of all real and personal property in Porto Rico and of all personal property of persons residing in Porto Rico."

This change is designed to give to the municipalities sufficient revenue to enable them to meet necessary expenses. The municipalities are no longer to receive a share of the internal revenue tax. This change is also in harmony with the general purposes of the Treasurer of Porto Rico, to hand over to the local authorities the revenue from real property taxes.

(*To be read with page* 192.)

THE RE-ORGANIZATION OF THE JUDICIAL SYSTEM

The Judiciary Act approved March 10, 1904, introduced important changes into the organization of the insular courts. The district court bench instead of being composed of three judges is reduced to one.

In all the municipal districts of the island, with the exception of the cities of San Juan, Ponce, Mayaguez, the municipal judge is to exercise the functions formerly performed by the municipal judge and justice of the peace. In the cities of San Juan, Ponce, and Mayaguez the justice of the peace's court is to be continued and is to have jurisdiction of all cases in which the punishment imposed does not exceed a fine of fifteen dollars, or imprisonment for thirty days, and in all cases of violations of municipal ordinances. The Act furthermore provides that in all municipal judicial districts for which a municipal court is not provided, a justice of the peace shall be appointed with the jurisdiction as above stated. In such municipalities the justice of the peace, in absence of a municipal judge, is to act as examining and committing magistrate.

(*To be read with page* 208.)

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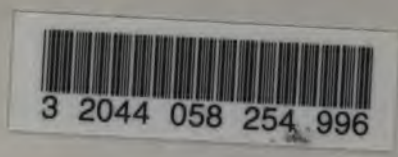

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